

Representative Brady Brammer proposes the following substitute bill:

COURT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends provisions related to courts.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to civil actions 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;



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

39 **Money Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill provides a special effective date.

43 This bill provides a coordination clause.

44 This bill provides revisor instructions.

45 **Utah Code Sections Affected:**

46 AMENDS:

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

- 57 [16-6a-117](#), as enacted by Laws of Utah 2000, Chapter 300
- 58 [16-6a-703](#), as last amended by Laws of Utah 2008, Chapter 364
- 59 [16-6a-710](#), as last amended by Laws of Utah 2008, Chapter 364
- 60 [16-6a-809](#), as last amended by Laws of Utah 2001, Chapters 9, 127
- 61 [16-6a-1405](#), as last amended by Laws of Utah 2015, Chapter 240
- 62 [16-6a-1414](#), as enacted by Laws of Utah 2000, Chapter 300
- 63 [16-6a-1416](#), as enacted by Laws of Utah 2000, Chapter 300
- 64 [16-6a-1417](#), as enacted by Laws of Utah 2000, Chapter 300
- 65 [16-6a-1604](#), as last amended by Laws of Utah 2008, Chapter 364
- 66 [16-6a-1609](#), as last amended by Laws of Utah 2002, Chapter 197
- 67 [16-10a-126](#), as enacted by Laws of Utah 1992, Chapter 277
- 68 [16-10a-303](#), as enacted by Laws of Utah 1992, Chapter 277
- 69 [16-10a-703](#), as last amended by Laws of Utah 2008, Chapter 364
- 70 [16-10a-720](#), as last amended by Laws of Utah 2010, Chapter 378
- 71 [16-10a-1330](#), as last amended by Laws of Utah 2010, Chapter 378
- 72 [16-10a-1430](#), as enacted by Laws of Utah 1992, Chapter 277
- 73 [16-10a-1434](#), as last amended by Laws of Utah 2010, Chapter 378
- 74 [16-10a-1532](#), as last amended by Laws of Utah 2000, Chapter 131
- 75 [16-10a-1604](#), as last amended by Laws of Utah 2008, Chapter 364
- 76 [16-11-13](#), as last amended by Laws of Utah 2000, Chapter 261
- 77 [16-16-202](#), as enacted by Laws of Utah 2008, Chapter 363
- 78 [16-16-1203](#), as enacted by Laws of Utah 2008, Chapter 363
- 79 [16-16-1206](#), as enacted by Laws of Utah 2008, Chapter 363
- 80 [16-16-1210](#), as enacted by Laws of Utah 2008, Chapter 363
- 81 [24-1-103](#), as last amended by Laws of Utah 2021, Chapter 230
- 82 [31A-2-305](#), as last amended by Laws of Utah 1997, Chapter 296
- 83 [31A-5-414](#), as enacted by Laws of Utah 1985, Chapter 242
- 84 [31A-5-415](#), as last amended by Laws of Utah 2000, Chapter 300
- 85 [31A-15-211](#), as enacted by Laws of Utah 1992, Chapter 258
- 86 [31A-16-107.5](#), as renumbered and amended by Laws of Utah 2015, Chapter 244
- 87 [31A-16-110](#), as last amended by Laws of Utah 1986, Chapter 204

- 88 [31A-16-111](#), as last amended by Laws of Utah 2000, Chapter 114
- 89 [31A-16-112](#), as enacted by Laws of Utah 2015, Chapter 244
- 90 [31A-16-117](#), as enacted by Laws of Utah 2015, Chapter 244
- 91 [31A-17-610](#), as last amended by Laws of Utah 2007, Chapter 309
- 92 [31A-27a-105](#), as last amended by Laws of Utah 2020, Chapter 32
- 93 [31A-27a-201](#), as last amended by Laws of Utah 2014, Chapters 290, 300
- 94 [31A-27a-206](#), as enacted by Laws of Utah 2007, Chapter 309
- 95 [31A-27a-207](#), as enacted by Laws of Utah 2007, Chapter 309
- 96 [31A-27a-209](#), as enacted by Laws of Utah 2007, Chapter 309
- 97 [31A-44-501](#), as enacted by Laws of Utah 2016, Chapter 270
- 98 [35A-4-308](#), as renumbered and amended by Laws of Utah 1996, Chapter 240
- 99 [35A-4-314](#), as enacted by Laws of Utah 2013, Chapter 473
- 100 [48-1d-111](#), as enacted by Laws of Utah 2013, Chapter 412
- 101 [48-1d-116](#), as enacted by Laws of Utah 2013, Chapter 412
- 102 [48-1d-901](#), as enacted by Laws of Utah 2013, Chapter 412
- 103 [48-1d-902](#), as enacted by Laws of Utah 2013, Chapter 412
- 104 [48-1d-903](#), as enacted by Laws of Utah 2013, Chapter 412
- 105 [48-1d-909](#), as enacted by Laws of Utah 2013, Chapter 412
- 106 [48-1d-1003](#), as enacted by Laws of Utah 2013, Chapter 412
- 107 [48-1d-1310](#), as enacted by Laws of Utah 2013, Chapter 412
- 108 [48-2e-204](#), as enacted by Laws of Utah 2013, Chapter 412
- 109 [48-2e-209](#), as enacted by Laws of Utah 2013, Chapter 412
- 110 [48-2e-801](#), as enacted by Laws of Utah 2013, Chapter 412
- 111 [48-2e-802](#), as enacted by Laws of Utah 2013, Chapter 412
- 112 [48-2e-803](#), as enacted by Laws of Utah 2013, Chapter 412
- 113 [48-2e-808](#), as enacted by Laws of Utah 2013, Chapter 412
- 114 [48-2e-1103](#), as enacted by Laws of Utah 2013, Chapter 412
- 115 [48-3a-204](#), as enacted by Laws of Utah 2013, Chapter 412
- 116 [48-3a-209](#), as enacted by Laws of Utah 2013, Chapter 412
- 117 [48-3a-701](#), as enacted by Laws of Utah 2013, Chapter 412
- 118 [48-3a-702](#), as enacted by Laws of Utah 2013, Chapter 412

119 [48-3a-703](#), as enacted by Laws of Utah 2013, Chapter 412
120 [48-3a-704](#), as enacted by Laws of Utah 2013, Chapter 412
121 [48-3a-707](#), as enacted by Laws of Utah 2013, Chapter 412
122 [48-3a-1003](#), as enacted by Laws of Utah 2013, Chapter 412
123 [48-3a-1111](#), as enacted by Laws of Utah 2013, Chapter 412
124 [57-8-44](#), as last amended by Laws of Utah 2014, Chapter 116
125 [57-8a-301](#), as last amended by Laws of Utah 2014, Chapter 116
126 [57-17-5](#), as last amended by Laws of Utah 2015, Chapter 258
127 [57-19-20](#), as last amended by Laws of Utah 2008, Chapter 382
128 [57-21-11](#), as last amended by Laws of Utah 1997, Chapter 375
129 [57-22-6](#), as last amended by Laws of Utah 2017, Chapter 203
130 [57-23-7](#), as enacted by Laws of Utah 1992, Chapter 169
131 [57-23-8](#), as last amended by Laws of Utah 2008, Chapter 382
132 [57-29-303](#), as enacted by Laws of Utah 2016, Chapter 381
133 [57-29-304](#), as enacted by Laws of Utah 2016, Chapter 381
134 [61-1-20](#), as last amended by Laws of Utah 2016, Chapter 401
135 [61-1-105](#), as enacted by Laws of Utah 2011, Chapter 318
136 [61-2-203](#), as last amended by Laws of Utah 2021, Chapter 259
137 [61-2c-403](#), as last amended by Laws of Utah 2009, Chapter 372
138 [61-2f-403](#), as last amended by Laws of Utah 2017, Chapter 182
139 [61-2f-407](#), as last amended by Laws of Utah 2018, Chapter 213
140 [61-2g-501](#), as last amended by Laws of Utah 2018, Chapter 213
141 [70-3a-309](#), as enacted by Laws of Utah 2010, Chapter 200
142 [70-3a-402](#), as last amended by Laws of Utah 2010, Chapter 200
143 [70-3a-405](#), as enacted by Laws of Utah 2002, Chapter 318
144 [70A-8-409.1](#), as last amended by Laws of Utah 2012, Chapter 386
145 [70A-9a-513.5](#), as enacted by Laws of Utah 2015, Chapter 228
146 [78A-6-350](#), as renumbered and amended by Laws of Utah 2021, Chapter 261
147 [78B-1-132](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
148 [78B-5-201](#), as last amended by Laws of Utah 2014, Chapters 114, 151
149 [78B-5-202](#), as last amended by Laws of Utah 2014, Chapter 151

- 150 **78B-5-206**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 151 **78B-6-110**, as last amended by Laws of Utah 2019, Chapter 491
- 152 **78B-6-313**, as enacted by Laws of Utah 2008, Chapter 3
- 153 **78B-6-1303**, as last amended by Laws of Utah 2016, Chapter 306
- 154 **78B-6-1904**, as last amended by Laws of Utah 2016, Chapter 222
- 155 **78B-6-1905**, as enacted by Laws of Utah 2014, Chapter 310
- 156 **78B-21-102**, as enacted by Laws of Utah 2017, Chapter 431

157 ENACTS:

- 158 **7-1-106**, Utah Code Annotated 1953
- 159 **31A-1-401**, Utah Code Annotated 1953
- 160 **78B-3a-101**, Utah Code Annotated 1953
- 161 **78B-3a-102**, Utah Code Annotated 1953
- 162 **78B-3a-103**, Utah Code Annotated 1953
- 163 **78B-3a-104**, Utah Code Annotated 1953
- 164 **78B-3a-206**, Utah Code Annotated 1953

165 RENUMBERS AND AMENDS:

- 166 **78B-3a-201**, (Renumbered from 78B-3-307, as renumbered and amended by Laws of
- 167 Utah 2008, Chapter 3)
- 168 **78B-3a-202**, (Renumbered from 78B-3-301, as renumbered and amended by Laws of
- 169 Utah 2008, Chapter 3)
- 170 **78B-3a-203**, (Renumbered from 78B-3-302, as renumbered and amended by Laws of
- 171 Utah 2008, Chapter 3)
- 172 **78B-3a-204**, (Renumbered from 78B-3-303, as renumbered and amended by Laws of
- 173 Utah 2008, Chapter 3)
- 174 **78B-3a-205**, (Renumbered from 78B-3-304, as renumbered and amended by Laws of
- 175 Utah 2008, Chapter 3)

176 REPEALS:

- 177 **3-1-20.2**, as enacted by Laws of Utah 2003, Chapter 70
- 178 **16-6a-1415**, as last amended by Laws of Utah 2008, Chapter 364
- 179 **16-10a-1431**, as last amended by Laws of Utah 2008, Chapter 364
- 180 **34-34-14**, as enacted by Laws of Utah 1969, Chapter 85

- 181 **78B-3-305**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 182 **78B-3-306**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 183 **78B-3-308**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 184 **78B-3-309**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 185 **78B-3-310**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 186 **78B-3-311**, as renumbered and amended by Laws of Utah 2008, Chapter 3

Utah Code Sections Affected by Coordination Clause:

- 188 **31A-5-414**, as enacted by Laws of Utah 1985, Chapter 242
- 189 **31A-5-415**, as last amended by Laws of Utah 2000, Chapter 300
- 190 **31A-16-111**, as last amended by Laws of Utah 2000, Chapter 114

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

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

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

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

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

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

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

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

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

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

(2) (a) If an association dissolves pursuant to this section, the trustees, a creditor, a member, or the attorney general may bring an action [~~in the district court in the county where the principal place of business of the association is located~~] in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

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

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

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

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

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

223 (v) other matters related to the dissolution.

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

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

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

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

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

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

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

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

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

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

244 **3-1-20.1. Grounds and procedure for judicial dissolution.**

245 (1) ~~[An association may be dissolved in a proceeding by the attorney general]~~ The
246 attorney general may bring an action in a court with jurisdiction under Title 78A, Judiciary and
247 Judicial Administration, to dissolve an association if it is established that the association:

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

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

251 (2) ~~[An association may be dissolved in a proceeding brought by a shareholder]~~ A
252 shareholder may bring an action in a court with jurisdiction under Title 78A, Judiciary and
253 Judicial Administration, to dissolve an association if it is established that:

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

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

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

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

264 (3) ~~[An association may be dissolved in a proceeding by a creditor]~~ A creditor may
265 bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial
266 Administration, to dissolve an association if it is established that:

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

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

271 (4) ~~[An association may be dissolved in a proceeding by the association to have its]~~ An
272 association may bring an action in a court with jurisdiction under Title 78A, Judiciary and
273 Judicial Administration, to have the association's voluntary dissolution continued under court

274 supervision.

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

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

279 (a) issue injunctions;

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

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

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

285 **7-1-106. Venue for action or petition brought by commissioner.**

286 If the commissioner brings an action in the district court under this title, the
287 commissioner shall bring the action:

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

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

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

291 **7-1-703. Restrictions on acquisition of institutions and holding companies --**

292 **Enforcement.**

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

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

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

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

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

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

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

307 (g) acquire, directly or indirectly, the voting or nonvoting securities of a depository
308 institution or a depository institution holding company subject to the jurisdiction of the
309 department if the acquisition would result in the person obtaining more than 20% of the
310 authorized voting securities of the institution if the nonvoting securities were converted into
311 voting securities; or

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

314 (2) (a) A person who willfully violates this section or a rule or order issued by the
315 department under this section is subject to a civil penalty of not more than \$1,000 per day
316 during which the violation continues.

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

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

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

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

326 (4) The commissioner may lengthen or shorten any time period specified in Section
327 7-1-705 if the commissioner finds it necessary to protect the public interest.

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

330 (6) The prior approval of the commissioner under Section 7-1-705 is not required for
331 the acquisition by a person other than an individual of voting securities or assets of a depository
332 institution or a depository institution holding company that are acquired by foreclosure or
333 otherwise in the ordinary course of collecting a debt previously contracted in good faith if these
334 voting securities or assets are divested within two years of acquisition. The commissioner may,
335 upon application, extend the two-year period of divestiture for up to three additional one-year

336 periods if, in the commissioner's judgment, the extension would not be detrimental to the
337 public interest. The commissioner may adopt rules to implement the intent of this Subsection
338 (6).

339 (7) (a) An out-of-state depository institution without a branch in Utah, or an
340 out-of-state depository institution holding company without a depository institution in Utah,
341 may acquire:

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

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

345 (b) For purposes of Subsection (7)(a), a depository institution chartered solely for the
346 purpose of acquiring another depository institution is considered to have been in existence for
347 the same period as the depository institution to be acquired, so long as it does not open for
348 business at any time before the acquisition.

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

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

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

357 **7-2-2. Action to review the commissioner's actions -- Supervision of actions of**
358 **commissioner in possession -- Authority of commissioner and court.**

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

364 [(2)] (1) Before taking possession of an institution or other person under [his] the
365 commissioner's jurisdiction, or within a reasonable time after taking possession of an
366 institution or other person without court order, as provided in this chapter, the commissioner

367 shall ~~[cause to be commenced in the appropriate district court, an action to provide the court~~
 368 ~~supervisory jurisdiction]~~ bring an action in a court with jurisdiction under Title 78A, Judiciary
 369 and Judicial Administration, to provide the court with supervisory jurisdiction to review the
 370 actions of the commissioner.

371 ~~[(3)]~~ (2) (a) The actions of the commissioner are subject to review of the court.

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

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

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

376 (c) Standing to seek review of any action of the commissioner or any receiver or
 377 liquidator appointed by [him] the commissioner is limited to persons whose rights, claims, or
 378 interests in the institution would be adversely affected by the action.

379 ~~[(4)]~~ (3) (a) The authority of the commissioner under this chapter is of an
 380 administrative and not judicial receivership.

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

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

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

387 **7-2-5. Appointment of receiver or assignment for creditors -- Notice required --**
 388 **Commissioner taking possession.**

389 ~~[No receiver may be]~~

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

395 (2) The commissioner may, within five days after service of the notice upon ~~[him]~~ the
 396 commissioner, take possession of the institution, in which case no further proceedings shall be
 397 had upon the application for the appointment of a receiver or under the deed of assignment, or,

398 if a receiver has been appointed or the assignee has entered upon the administration of his trust,
399 the appointment shall be vacated or the assignee shall be removed upon application of the
400 commissioner to the court by which the receiver was appointed or in which the assignment was
401 filed, and the commissioner shall proceed to administer the assets of the institution as provided
402 in this chapter.

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

404 **7-2-6. Possession by commissioner -- Notice -- Presentation, allowance, and**
405 **disallowance of claims -- Objections to claims.**

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

408 (i) posted in each office of the institution located in this state; or

409 (ii) delivered to a controlling person or officer of the institution.

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

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

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

417 (iii) the court approves.

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

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

424 (iii) The notice shall be published:

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

428 (II) published again approximately 30 days and 60 days after the date of the first

429 publication; and

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

431 (b) (i) (A) Within 60 days of taking possession of a depository institution, the
432 commissioner shall send a similar notice to all persons whose identity is reflected in the books
433 or records of the institution as depositors or other creditors, secured or unsecured, parties to
434 litigation involving the institution pending at the date the commissioner takes possession of the
435 institution, and all other potential claimants against the institution whose identity is reasonably
436 ascertainable by the commissioner from examination of the books and records of the
437 institution.

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

441 (C) The notice shall specify a filing date for claims against the institution not less than
442 60 days after the date of mailing.

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

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

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

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

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

460 commissioner, receiver, or liquidator.

461 (c) Upon good cause shown, the court [~~having~~] with supervisory jurisdiction under
462 Section 7-2-2 may extend the time in which the commissioner may serve any notice required
463 by this chapter.

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

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

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

471 (ii) All claims against the institution shall be filed with the receiver or liquidator within
472 the applicable time specified in this section and the receiver or liquidator shall adjudicate the
473 claims as provided in Subsection (2)(d).

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

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

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

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

490 (c) No petition for lifting the stay provided by Section 7-2-7 may be filed with respect

491 to a secured claim before the claim has been filed and allowed or disallowed by the
492 commissioner in accordance with Subsection (3)(a).

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

494 (a) Each claim filed on or before the filing date shall be allowed or disallowed within
495 180 days after the final publication of notice.

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

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

500 (ii) Claims based on contractual obligations of the institution in existence on the date
501 of possession may be allowed unless the obligation of the institution is dependent on events
502 occurring after the date of possession, or the amount or worth of the claim cannot be
503 determined before any distribution of assets of the institution is made to claimants having the
504 same priority under Section 7-2-15.

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

509 (ii) The commissioner may disallow or allow the claim in an amount determined by the
510 commissioner, settle the claim in an amount approved by the court, or, in ~~his~~ the
511 commissioner's discretion, refer the claim to the court ~~[designated by Section 7-2-2]~~ with
512 supervisory jurisdiction under Section 7-2-2 for determination in accordance with procedures
513 designated by the court.

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

518 ~~[(it)]~~ (iv) If the commissioner finds there are or may be issues of fact or law as to the
519 validity of a claim, liquidated or unliquidated, or its proper allowance or disallowance under
520 the provisions of this chapter, ~~he~~ the commissioner may appoint a hearing examiner to
521 conduct a hearing and to prepare and submit recommended findings of fact and conclusions of

522 law for final consideration by the commissioner.

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

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

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

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

533 (g) The commissioner or any receiver appointed by ~~him~~ the commissioner may
534 disallow a claim that seeks a dollar amount if it is determined by the court ~~having~~ with
535 supervisory jurisdiction under Section 7-2-2 that the commissioner or receiver or conservator
536 will not have any assets with which to pay the claim under the priorities established by Section
537 7-2-15.

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

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

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

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

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

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

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

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

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

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

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

565 (8) (a) A claim against an institution or its assets based on a contract or agreement may
566 be disallowed unless the agreement:

567 (i) is in writing;

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

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

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

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

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

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

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

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

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

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

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

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

592 (10) (a) If a claim against the institution has been asserted in any judicial,
593 administrative, or other proceeding pending at the time the commissioner took possession of
594 the institution under this chapter or under Chapter 19, Acquisition of Failing Depository
595 Institutions or Holding Companies, the claimant shall file copies of all documents of record in
596 the pending proceeding with the commissioner within the time for filing claims as provided in
597 Subsection (2).

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

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

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

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

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

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

612 **7-2-9. Conservatorship, receivership, or liquidation of institution -- Appointment**
613 **of receiver -- Review of actions.**

614 (1) (a) Upon taking possession of the institution, the commissioner may appoint a

615 receiver to perform the duties of the commissioner.

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

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

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

624 **(ii)** After receiving notice in writing of the acceptance of the appointment, the
625 commissioner shall file a certificate of appointment in the commissioner's office and with the
626 clerk of the [district] court.

627 **(iii)** After the filing of the certificate, the possession of all assets, business, and
628 property of the institution is considered transferred from the institution and the commissioner
629 to the agency, and title to all assets, business, and property of the institution is vested in the
630 agency without the execution of any instruments of conveyance, assignment, transfer, or
631 endorsement.

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

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

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

644 **(iv)** In the event of any conflict between state and federal law, including provisions for
645 adjudicating claims against the institution or receiver, the receiver shall comply with the federal

646 law and any resulting violation of state law does not by itself constitute grounds for the court to
647 disapprove the actions of the receiver or impose any penalty for such violation.

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

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

657 (iii) Upon taking possession of an institution, no person other than the commissioner or
658 receiver shall have standing to assert any such right or claim of the institution, including its
659 depositors, creditors, or shareholders unless the right or claim has been abandoned by the
660 commissioner or receiver with approval of the court.

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

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

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

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

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

675 (d) If a receiver is not a federal deposit insurance agency, the receiver and any
676 assistants and agents shall provide bond or other security specified by the commissioner and

677 approved by the court for the faithful discharge of all duties and responsibilities in connection
678 with the receivership including the accounting for money received and paid.

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

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

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

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

688 (c) Any act or omission of the commissioner or of any federal deposit insurance agency
689 as a receiver appointed by ~~[him]~~ the commissioner while acting pursuant to this chapter shall
690 be deemed to be the exercise of a discretionary function within the meaning of Section
691 63G-7-301 of the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United
692 States.

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

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

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

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

707 (c) Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties with respect

708 to the allegations set forth in a petition or response.

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

711 ~~[(d)]~~ (e) All further proceedings are to be conducted in accordance with the Utah Rules
712 of Civil Procedure.

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

718 Section 9. Section 7-2-10 is amended to read:

719 **7-2-10. Inventory of assets -- Listings of claims -- Report of proceedings -- Filing**
720 **-- Inspection.**

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

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

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

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

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

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

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

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

746 **7-5-13. Collective investment funds.**

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

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

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

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

754 (ii) the plan establishing the collective investment fund specifically authorized the
755 participation.

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

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

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

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

767 **7-23-401. Operational requirements for deferred deposit loans.**

768 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
769 lender shall:

770 (a) post in a conspicuous location on its premises that can be viewed by a person
771 seeking a deferred deposit loan:
772 (i) a complete schedule of any interest or fees charged for a deferred deposit loan that
773 states the interest and fees using dollar amounts;
774 (ii) a number the person can call to make a complaint to the department regarding the
775 deferred deposit loan; and
776 (iii) a list of states where the deferred deposit lender is registered or authorized to offer
777 deferred deposit loans through the Internet or other electronic means;
778 (b) enter into a written contract for the deferred deposit loan;
779 (c) conspicuously disclose in the written contract:
780 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a
781 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan
782 without incurring additional charges above the charges provided in the written contract;
783 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind
784 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any
785 charges;
786 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
787 without the person receiving the deferred deposit loan requesting the rollover of the deferred
788 deposit loan;
789 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
790 rollover requires the person to pay the amount owed by the person under the deferred deposit
791 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
792 executed; and
793 (v) (A) the name and address of a designated agent required to be provided the
794 department under Subsection 7-23-201(2)(d)(vi); and
795 (B) a statement that service of process may be made to the designated agent;
796 (d) provide the person seeking the deferred deposit loan:
797 (i) a copy of the written contract described in Subsection (1)(c); and
798 (ii) written notice that the person seeking the deferred deposit loan is eligible to enter
799 into an extended payment plan described in Section 7-23-403;
800 (e) orally review with the person seeking the deferred deposit loan the terms of the

801 deferred deposit loan including:

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

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

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

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

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

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

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

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

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

823 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
824 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

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

830 (h) in accordance with Subsection (7), receive a signed acknowledgment from a person
831 attempting to receive a deferred deposit loan that the person has the ability to repay the

832 deferred deposit loan, which may include rollovers or extended payment plans as allowed by
833 this chapter; and

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

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

840 (a) in a conspicuous manner; and

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

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

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

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

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

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

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

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

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

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

862 (ii) the combined terms of the original deferred deposit loan and the new deferred

863 deposit loan total more than 10 weeks of consecutive interest;

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

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

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

874 (h) modify by contract the venue provisions in [~~Title 78B, Chapter 3, Actions and~~
875 ~~Venue~~] Title 78B, Chapter 3a, Venue for Civil Actions; or

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

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

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

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

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

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

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

893 (A) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting

894 agency, as defined in 15 U.S.C. Sec. 1681a; or

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

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

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

904 (7) A deferred deposit lender is in compliance with Subsection (1)(h) if the deferred
905 deposit lender obtains from the person seeking the deferred deposit loan a signed
906 acknowledgment that is in 14-point bold font, that the person seeking the deferred deposit loan
907 has:

908 (a) reviewed the payment terms of the deferred deposit loan agreement;

909 (b) received a disclosure that a deferred deposit loan may not be rolled over if the
910 rollover requires the person to pay the amount owed by the person under the deferred deposit
911 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
912 first executed;

913 (c) received a disclosure explaining the extended payment plan options; and

914 (d) acknowledged the ability to repay the deferred deposit loan in the ordinary course,
915 which may include rollovers, or extended payment plans as allowed under this chapter.

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

919 (i) the person must remedy the default; and

920 (ii) the deferred deposit lender may initiate a civil action against the person if the
921 person fails to cure the default within the 30-day period or through an extended payment plan
922 meeting the requirements of Section [7-23-403](#).

923 (b) A deferred deposit lender may provide the notice required under this Subsection
924 (8):

- 925 (i) by sending written notice to the address provided by the person to the deferred
926 deposit lender;
- 927 (ii) by sending an electronic transmission to a person if electronic contact information
928 is provided to the deferred deposit lender; or
- 929 (iii) pursuant to the Utah Rules of Civil Procedure.
- 930 (c) A notice under this Subsection (8), in addition to complying with Subsection (8)(a),
931 shall:
- 932 (i) be in English, if the initial transaction is conducted in English;
- 933 (ii) state the date by which the person must act to enter into an extended payment plan;
- 934 (iii) explain the procedures the person must follow to enter into an extended payment
935 plan;
- 936 (iv) subject to Subsection 7-23-403(7), if the deferred deposit lender requires the
937 person to make an initial payment to enter into an extended payment plan:
- 938 (A) explain the requirement; and
- 939 (B) state the amount of the initial payment and the date the initial payment shall be
940 made;
- 941 (v) state that the person has the opportunity to enter into an extended payment plan for
942 a time period meeting the requirements of Subsection 7-23-403(2)(b); and
- 943 (vi) include the following amounts:
- 944 (A) the remaining balance on the original deferred deposit loan;
- 945 (B) the total payments made on the deferred deposit loan;
- 946 (C) any charges added to the deferred deposit loan amount allowed pursuant to this
947 chapter; and
- 948 (D) the total amount due if the person enters into an extended payment plan.
- 949 Section 12. Section **16-6a-117** is amended to read:
- 950 **16-6a-117. Judicial relief.**
- 951 (1) (a) A director, officer, delegate, or member may petition [~~the applicable district~~] a
952 court to take an action provided in Subsection (1)(b) if for any reason it is impractical or
953 impossible for a nonprofit corporation in the manner prescribed by this chapter[~~;~~its] or the
954 nonprofit corporation's articles of incorporation[~~;~~] or bylaws to:
- 955 (i) call or conduct a meeting of [~~its~~] the nonprofit corporation's members, delegates, or

956 directors; or

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

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

961 (i) a meeting be called; or

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

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

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

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

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

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

971 (2) (a) A court [~~specified in Subsection (1)]~~ shall, in an order issued pursuant to this
972 section, provide for a method of notice reasonably designed to give actual notice to all persons
973 who would be entitled to notice of a meeting held pursuant to this chapter, the articles of
974 incorporation, or bylaws.

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

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

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

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

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

985 (a) quorums; or

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

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

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

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

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

998 (b) shall have the same force and effect as if it complied with every requirement
 999 imposed by this chapter~~[,] the~~ or the nonprofit corporation's articles of incorporation~~[,] or~~
 1000 bylaws.

1001 (6) In addition to a meeting held under this section, a court-ordered meeting may be
 1002 held pursuant to Section [16-6a-703](#).

1003 Section 13. Section **16-6a-703** is amended to read:

1004 **16-6a-703. Court-ordered meeting.**

1005 ~~[(1)(a) Upon an application described in Subsection (1)(b) the holding of a meeting of~~
 1006 ~~the members may be summarily ordered by:]~~

1007 ~~[(i) the district court of the county in this state where the nonprofit corporation's~~
 1008 ~~principal office is located; or]~~

1009 ~~[(ii) if the nonprofit corporation has no principal office in this state, the district court in~~
 1010 ~~and for Salt Lake County.]~~

1011 ~~[(b) Subsection (1)(a) applies to an application by:]~~

1012 (3) ~~[(i)]~~ (a) ~~[any]~~ A voting member entitled to participate in an annual meeting may
 1013 petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, if an
 1014 annual meeting was required to be held and was not held within 15 months after:

1015 ~~[(A)]~~ (i) the corporation's last annual meeting; or

1016 ~~[(B)]~~ (ii) if there has been no annual meeting, the date of incorporation~~[,] or~~.

1017 ~~[(i)]~~ (b) ~~[any]~~ A person who participated in a call of or demand for a special meeting

1018 effective under Subsection 16-6a-702(1)[;] may petition a court with jurisdiction under Title
1019 78A, Judiciary and Judicial Administration, if:

1020 [~~(A)~~] (i) notice of the special meeting was not given within 30 days after[;]

1021 [~~(B)~~] the date of the call[;] or

1022 [~~(C)~~] the date the last of the demands necessary to require the calling of the meeting
1023 was received by the nonprofit corporation pursuant to Subsection 16-6a-702(1)(b); or

1024 [~~(D)~~] (ii) the special meeting was not held in accordance with the notice.

1025 (2) If a petition is filed under this section, the court may summarily order the holding
1026 of a meeting of the members.

1027 [~~(2)~~] (3) A court that orders a meeting under Subsection [~~(1)~~] (2) may:

1028 (a) fix the time and place of the meeting;

1029 (b) determine the members entitled to participate in the meeting;

1030 (c) specify a record date for determining members entitled to notice of and to vote at
1031 the meeting;

1032 (d) prescribe the form and content of the notice of the meeting;

1033 (e) (i) fix the quorum required for specific matters to be considered at the meeting; or

1034 (ii) direct that the votes represented at the meeting constitute a quorum for action on
1035 the specific matters to be considered at the meeting; and

1036 (f) enter other orders necessary or appropriate to accomplish the holding of the
1037 meeting.

1038 Section 14. Section **16-6a-710** is amended to read:

1039 **16-6a-710. Members' list for meeting and action by written ballot.**

1040 (1) (a) Unless otherwise provided by the bylaws, after fixing a record date for a notice
1041 of a meeting or for determining the members entitled to take action by written ballot, a
1042 nonprofit corporation shall prepare a list of the names of all [its] the nonprofit corporation's
1043 members who are:

1044 (i) (A) entitled to notice of the meeting; and

1045 (B) to vote at the meeting; or

1046 (ii) to take the action by written ballot.

1047 (b) The list required by Subsection (1) shall:

1048 (i) be arranged by voting group;

1049 (ii) be alphabetical within each voting group;
1050 (iii) show the address of each member entitled to notice of, and to vote at, the meeting
1051 or to take such action by written ballot; and

1052 (iv) show the number of votes each member is entitled to vote at the meeting or by
1053 written ballot.

1054 (2) (a) If prepared in connection with a meeting of the members, the members' list
1055 required by Subsection (1) shall be available for inspection by any member entitled to vote at
1056 the meeting:

1057 (i) (A) beginning the earlier of:

1058 (I) 10 days before the meeting for which the list was prepared; or

1059 (II) two business days after notice of the meeting is given; and

1060 (B) continuing through the meeting, and any adjournment of the meeting; and

1061 (ii) (A) at the nonprofit corporation's principal office; or

1062 (B) at a place identified in the notice of the meeting in the city where the meeting will
1063 be held.

1064 (b) (i) The nonprofit corporation shall make the members' list required by Subsection
1065 (1) available at the meeting.

1066 (ii) Any member entitled to vote at the meeting or an agent or attorney of a member
1067 entitled to vote at the meeting is entitled to inspect the members' list at any time during the
1068 meeting or any adjournment.

1069 (c) A member entitled to vote at the meeting, or an agent or attorney of a member
1070 entitled to vote at the meeting, is entitled on written demand to inspect and, subject to
1071 Subsection 16-6a-1602(3) and Subsections 16-6a-1603(2) and (3), to copy a members' list
1072 required by Subsection (1):

1073 (i) during:

1074 (A) regular business hours; and

1075 (B) the period it is available for inspection; and

1076 (ii) at the member's expense.

1077 (3) (a) [~~On application of a~~ A member of a nonprofit corporation~~], the applicable~~
1078 ~~district court may take an action described in Subsection (3)(b)] may petition a court with
1079 jurisdiction under Title 78A, Judiciary and Judicial Administration, if the nonprofit corporation~~

1080 refuses to allow a member entitled to vote at the meeting or by the written ballot, or an agent or
1081 attorney of a member entitled to vote at the meeting or by the written ballot, to inspect or copy
1082 the members' list during the period ~~[it]~~ the nonprofit corporation is required to be available for
1083 inspection under Subsection (2).

1084 (b) ~~[Under Subsection (3)(a), the applicable]~~ If a petition is filed under Subsection
1085 (3)(a), the court may:

1086 (i) summarily order the inspection or copying of the members' list at the nonprofit
1087 corporation's expense; and

1088 (ii) until the inspection or copying is complete:

1089 (A) postpone or adjourn the meeting for which the members' list was prepared; or

1090 (B) postpone the time when the nonprofit corporation must receive written ballots in
1091 connection with which the members' list was prepared.

1092 ~~[(c) For purposes of this Subsection (3), the applicable court is:]~~

1093 ~~[(i) the district court of the county in this state where the nonprofit corporation's~~
1094 ~~principal office is located; or]~~

1095 ~~[(ii) if the nonprofit corporation has no principal office in this state, the district court in~~
1096 ~~and for Salt Lake County.]~~

1097 (4) If a court orders inspection or copying of a members' list pursuant to Subsection
1098 (3), unless the nonprofit corporation proves that it refused inspection or copying of the list in
1099 good faith because it had a reasonable basis for doubt about the right of the member or the
1100 agent or attorney of the member to inspect or copy the members' list:

1101 (a) the court shall order the nonprofit corporation to pay the member's costs, including
1102 reasonable counsel fees, incurred in obtaining the order;

1103 (b) the court may order the nonprofit corporation to pay the member for any damages
1104 the member incurred; and

1105 (c) the court may grant the member any other remedy afforded the member by law.

1106 (5) If a court orders inspection or copying of a members' list pursuant to Subsection
1107 (3), the court may impose reasonable restrictions on the use or distribution of the list by the
1108 member.

1109 (6) Failure to prepare or make available the members' list does not affect the validity of
1110 action taken at the meeting or by means of the written ballot.

1111 Section 15. Section **16-6a-809** is amended to read:

1112 **16-6a-809. Removal of directors by judicial proceeding.**

1113 (1) (a) [~~The applicable~~] A court may remove a director [~~in a proceeding commenced~~
1114 ~~either~~], in an action brought by the nonprofit corporation or by voting members holding at least
1115 10% of the votes entitled to be cast in the election of the director's successor, if the court finds
1116 that:

1117 (i) the director engaged in:

1118 (A) fraudulent or dishonest conduct; or

1119 (B) gross abuse of authority or discretion with respect to the nonprofit corporation; or

1120 (ii) (A) a final judgment has been entered finding that the director has violated a duty
1121 set forth in Section **16-6a-822**; and

1122 (B) removal is in the best interests of the nonprofit corporation.

1123 [~~(b) For purposes of this Subsection (1), the applicable court is the:~~]

1124 [~~(i) district court of the county in this state where a nonprofit corporation's principal~~
1125 ~~office is located; or]~~

1126 [~~(ii) if the nonprofit corporation has no principal office in this state:]~~

1127 [~~(A) the district court of the county in which its registered office is located; or]~~

1128 [~~(B) if the nonprofit corporation has no registered office, the district court for Salt Lake~~
1129 ~~County:]~~

1130 (2) The court that removes a director may bar the director for a period prescribed by the
1131 court from:

1132 (a) reelection;

1133 (b) reappointment; or

1134 (c) designation.

1135 (3) If voting members commence a proceeding under Subsection (1), the voting
1136 members shall make the nonprofit corporation a party defendant.

1137 (4) A director who is removed pursuant to this section may deliver to the division for
1138 filing a statement to that effect pursuant to Section **16-6a-1608**.

1139 Section 16. Section **16-6a-1405** is amended to read:

1140 **16-6a-1405. Effect of dissolution.**

1141 (1) A dissolved nonprofit corporation continues its corporate existence but may not

1142 carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

1143 (a) collecting its assets;

1144 (b) returning, transferring, or conveying assets held by the nonprofit corporation upon a
1145 condition requiring return, transfer, or conveyance, which condition occurs by reason of the
1146 dissolution, in accordance with the condition;

1147 (c) transferring, subject to any contractual or legal requirements, its assets as provided
1148 in or authorized by its articles of incorporation or bylaws;

1149 (d) discharging or making provision for discharging its liabilities; and

1150 (e) doing every other act necessary to wind up and liquidate its assets and affairs.

1151 (2) Dissolution of a nonprofit corporation does not:

1152 (a) transfer title to the nonprofit corporation's property including title to water rights,
1153 water conveyance facilities, or other assets of a nonprofit corporation organized to divert or
1154 distribute water to its members;

1155 (b) subject its directors or officers to standards of conduct different from those
1156 prescribed in this chapter;

1157 (c) change quorum or voting requirements for its board of directors or members;

1158 (d) change provisions for selection, resignation, or removal of its directors or officers,
1159 or both;

1160 (e) change provisions for amending its bylaws or its articles of incorporation;

1161 (f) prevent commencement of a proceeding by or against the nonprofit corporation in
1162 its corporate name; or

1163 (g) abate or suspend a proceeding pending by or against the nonprofit corporation on
1164 the effective date of dissolution.

1165 (3) Nothing in this section may be applied in a manner inconsistent with a court's
1166 power of judicial dissolution exercised in accordance with Section 16-6a-1414 [~~or~~
1167 ~~16-6a-1415~~].

1168 Section 17. Section **16-6a-1414** is amended to read:

1169 **16-6a-1414. Grounds and procedure for judicial dissolution.**

1170 (1) [~~A nonprofit corporation may be dissolved in a proceeding by the~~] The attorney
1171 general or the division director may bring an action in a court with jurisdiction under Title 78A,
1172 Judiciary and Judicial Administration, to dissolve a nonprofit corporation if it is established

1173 that:

1174 (a) the nonprofit corporation obtained [~~its~~] the nonprofit corporation's articles of
1175 incorporation through fraud; or

1176 (b) the nonprofit corporation has continued to exceed or abuse the authority conferred
1177 upon [~~it~~] the nonprofit corporation by law.

1178 (2) [~~A nonprofit corporation may be dissolved in a proceeding by a member or~~
1179 ~~director~~] A member or director of a nonprofit corporation may bring an action in a court with
1180 jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve the nonprofit
1181 corporation if it is established that:

1182 (a) (i) the directors are deadlocked in the management of the corporate affairs;

1183 (ii) the members, if any, are unable to break the deadlock; and

1184 (iii) irreparable injury to the nonprofit corporation is threatened or being suffered;

1185 (b) the directors or those in control of the nonprofit corporation have acted, are acting,
1186 or will act in a manner that is illegal, oppressive, or fraudulent;

1187 (c) the members are deadlocked in voting power and have failed, for a period that
1188 includes at least two consecutive annual meeting dates, to elect successors to directors whose
1189 terms have expired or would have expired upon the election of their successors; or

1190 (d) the corporate assets are being misapplied or wasted.

1191 (3) [~~A nonprofit corporation may be dissolved in a proceeding by a creditor~~] A creditor
1192 may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial
1193 Administration, to dissolve a nonprofit corporation if it is established that:

1194 (a) (i) the creditor's claim has been reduced to judgment;

1195 (ii) the execution on the judgment has been returned unsatisfied; and

1196 (iii) the nonprofit corporation is insolvent; or

1197 (b) (i) the nonprofit corporation is insolvent; and

1198 (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and
1199 owing.

1200 (4) If an action is brought under this section, it is not necessary to make directors or
1201 members parties to the action to dissolve the nonprofit corporation unless relief is sought
1202 against the members individually.

1203 (5) In an action under this section, the court may:

1204 (a) issue injunctions;
1205 (b) appoint a receiver or a custodian pendente lite with all powers and duties the court
1206 directs; or

1207 (c) take other action required to preserve the nonprofit corporation's assets wherever
1208 located and carry on the business of the nonprofit corporation until a full hearing can be held.

1209 ~~[(4)] (6) [(a)]~~ If a nonprofit corporation has been dissolved by voluntary or
1210 administrative action taken under this part:

1211 ~~[(i)]~~ (a) the nonprofit corporation may bring a proceeding to wind up and liquidate its
1212 business and affairs under judicial supervision in accordance with Section 16-6a-1405; and

1213 ~~[(ii)]~~ (b) the attorney general, a director, a member, or a creditor may bring a
1214 proceeding to wind up and liquidate the affairs of the nonprofit corporation under judicial
1215 supervision in accordance with Section 16-6a-1405, upon establishing the grounds set forth in
1216 Subsections (1) through (3).

1217 ~~[(b) As used in Sections 16-6a-1415 through 16-6a-1417:]~~

1218 ~~[(i) a "judicial proceeding to dissolve the nonprofit corporation" includes a proceeding~~
1219 ~~brought under this Subsection (4); and]~~

1220 ~~[(ii) a "decree of dissolution" includes an order of a court entered in a proceeding under~~
1221 ~~this Subsection (4) that directs that the affairs of a nonprofit corporation shall be wound up and~~
1222 ~~liquidated under judicial supervision.]~~

1223 Section 18. Section 16-6a-1416 is amended to read:

1224 **16-6a-1416. Receivership or custodianship.**

1225 (1) As used in this section:

1226 (a) "Decree of dissolution" includes an order of a court entered in a proceeding under
1227 Subsection 16-6a-1414(4) that directs that the affairs of a nonprofit corporation be wound up
1228 and liquidated under judicial supervision.

1229 (b) "Judicial proceeding to dissolve the nonprofit corporation" includes a proceeding
1230 brought under Subsection 16-6a-1414(4).

1231 ~~[(1)]~~ (2) (a) A court in a judicial proceeding brought to dissolve a nonprofit corporation
1232 may appoint:

1233 (i) one or more receivers to wind up and liquidate the affairs of the nonprofit
1234 corporation; or

- 1235 (ii) one or more custodians to manage the affairs of the nonprofit corporation.
- 1236 (b) Before appointing a receiver or custodian, the court shall hold a hearing, after
1237 giving notice to:
- 1238 (i) all parties to the proceeding; and
- 1239 (ii) any interested persons designated by the court.
- 1240 (c) The court appointing a receiver or custodian has exclusive jurisdiction over the
1241 nonprofit corporation and all of its property, wherever located.
- 1242 (d) The court may appoint as a receiver or custodian:
- 1243 (i) an individual;
- 1244 (ii) a domestic or foreign corporation authorized to conduct affairs in this state; or
- 1245 (iii) a domestic or foreign nonprofit corporation authorized to conduct affairs in this
1246 state.
- 1247 (e) The court may require the receiver or custodian to post bond, with or without
1248 sureties, in an amount specified by the court.
- 1249 [~~(2)~~] (3) The court shall describe the powers and duties of the receiver or custodian in
1250 its appointing order that may be amended from time to time. Among other powers the receiver
1251 shall have the power to:
- 1252 (a) dispose of all or any part of the property of the nonprofit corporation, wherever
1253 located:
- 1254 (i) at a public or private sale; and
- 1255 (ii) if authorized by the court; and
- 1256 (b) sue and defend in the receiver's own name as receiver of the nonprofit corporation
1257 in all courts.
- 1258 [~~(3)~~] (4) The custodian may exercise all of the powers of the nonprofit corporation,
1259 through or in place of its board of directors or officers, to the extent necessary to manage the
1260 affairs of the nonprofit corporation in the best interests of its members and creditors.
- 1261 [~~(4)~~] (5) If doing so is in the best interests of the nonprofit corporation and its members
1262 and creditors, the court may:
- 1263 (a) during a receivership, redesignate the receiver as a custodian; and
- 1264 (b) during a custodianship, redesignate the custodian as a receiver.
- 1265 [~~(5)~~] (6) The court from time to time during the receivership or custodianship may

1266 order compensation paid and expense disbursements or reimbursements made from the assets
1267 of the nonprofit corporation or proceeds from the sale of the assets to:

- 1268 (a) the receiver;
1269 (b) the custodian; or
1270 (c) the receiver's or custodian's attorney.

1271 Section 19. Section **16-6a-1417** is amended to read:

1272 **16-6a-1417. Decree of dissolution.**

1273 (1) As used in this section:

1274 (a) "Decree of dissolution" includes an order of a court entered in a proceeding under
1275 Subsection [16-6a-1414](#)(4) that directs that the affairs of a nonprofit corporation be wound up
1276 and liquidated under judicial supervision.

1277 (b) "Judicial proceeding to dissolve the nonprofit corporation" includes a proceeding
1278 brought under Subsection [16-6a-1414](#)(4).

1279 ~~[(1)]~~ (2) If after a hearing the court determines that one or more grounds for judicial
1280 dissolution described in Section [16-6a-1414](#) exist:

- 1281 (a) the court may enter a decree:
1282 (i) dissolving the nonprofit corporation; and
1283 (ii) specifying the effective date of the dissolution; and
1284 (b) the clerk of the court shall deliver a certified copy of the decree to the division
1285 which shall file it accordingly.

1286 ~~[(2)]~~ (3) After entering the decree of dissolution, the court shall direct:

1287 (a) the winding up and liquidation of the nonprofit corporation's affairs in accordance
1288 with Section [16-6a-1405](#); and

1289 (b) the giving of notice to:

- 1290 (i) (A) the nonprofit corporation's registered agent; or
1291 (B) the division if it has no registered agent; and
1292 (ii) to claimants in accordance with Sections [16-6a-1406](#) and [16-6a-1407](#).

1293 ~~[(3)]~~ (4) The court's order or decision may be appealed as in other civil proceedings.

1294 Section 20. Section **16-6a-1604** is amended to read:

1295 **16-6a-1604. Court-ordered inspection of corporate records.**

1296 (1) (a) A director or member may ~~[petition the applicable court]~~ bring a petition in a

1297 court with jurisdiction under Title 78A, Judiciary and Judicial Administration, against a
1298 nonprofit corporation if:

1299 (i) [~~a~~] the nonprofit corporation refuses to allow a director or member, or the director's
1300 or member's agent or attorney, to inspect or copy any records that the director or member is
1301 entitled to inspect or copy under Subsection 16-6a-1602(1); and

1302 (ii) the director or member complies with Subsection 16-6a-1602(1).

1303 (b) [~~If petitioned~~] If a petition is filed under Subsection (1)(a), the court may
1304 summarily order the inspection or copying of the records demanded at the nonprofit
1305 corporation's expense on an expedited basis.

1306 (2) (a) A director or member may [~~petition the applicable court~~] bring a petition in a
1307 court with jurisdiction under Title 78A, Judiciary and Judicial Administration, against a
1308 nonprofit corporation if:

1309 (i) [~~a~~] the nonprofit corporation refuses to allow a director or member, or the director's
1310 or member's agent or attorney, to inspect or copy any records that the director or member is
1311 entitled to inspect or copy pursuant to Subsections 16-6a-1602(2) and (3) within a reasonable
1312 time following the director's or member's demand; and

1313 (ii) the director or member complies with Subsections 16-6a-1602(2) and (3).

1314 (b) [~~If the court is petitioned~~] If a petition is brought under Subsection (2)(a), the court
1315 may summarily order the inspection or copying of the records demanded.

1316 (3) If a court orders inspection or copying of the records demanded under Subsection
1317 (1) or (2), unless the nonprofit corporation proves that [~~it~~] the nonprofit corporation refused
1318 inspection or copying in good faith because [~~it~~] the nonprofit corporation had a reasonable
1319 basis for doubt about the right of the director or member, or the director's or member's agent or
1320 attorney, to inspect or copy the records demanded:

1321 (a) the court shall also order the nonprofit corporation to pay the director's or member's
1322 costs, including reasonable counsel fees, incurred to obtain the order;

1323 (b) the court may order the nonprofit corporation to pay the director or member for any
1324 damages the member incurred;

1325 (c) if inspection or copying is ordered pursuant to Subsection (2), the court may order
1326 the nonprofit corporation to pay the director's or member's inspection and copying expenses;
1327 and

1328 (d) the court may grant the director or member any other remedy provided by law.

1329 (4) If a court orders inspection or copying of records demanded, [it] the court may
1330 impose reasonable restrictions on the use or distribution of the records by the demanding
1331 director or member.

1332 [~~(5) For purposes of this section, the applicable court is:~~]

1333 [~~(a) the district court of the county in this state where the nonprofit corporation's
1334 principal office is located; or]~~

1335 [~~(b) if the nonprofit corporation has no principal office in this state, the district court in
1336 and for Salt Lake County.]~~

1337 Section 21. Section **16-6a-1609** is amended to read:

1338 **16-6a-1609. Interrogatories by division.**

1339 (1) (a) The division may give interrogatories reasonably necessary to ascertain whether
1340 a nonprofit corporation has complied with the provisions of this chapter applicable to the
1341 nonprofit corporation to:

1342 (i) any domestic or foreign nonprofit corporation subject to the provisions of this
1343 chapter; and

1344 (ii) to any officer or director of a nonprofit corporation described in Subsection
1345 (1)(a)(i).

1346 (b) The interrogatories described in this Subsection (1) shall be answered within:

1347 (i) 30 days after the mailing of the interrogatories; or

1348 (ii) additional time as fixed by the division.

1349 (c) The answers to the interrogatories shall be:

1350 (i) full and complete; and

1351 (ii) made in writing.

1352 (d) (i) If the interrogatories are directed to an individual, the interrogatories shall be
1353 answered by the individual.

1354 (ii) If directed to a nonprofit corporation, the interrogatories shall be answered by:

1355 (A) the chair of the board of directors of the nonprofit corporation;

1356 (B) all of the nonprofit corporation's directors;

1357 (C) one of the nonprofit corporation's officers; or

1358 (D) any other person authorized to answer the interrogatories as the nonprofit

1359 corporation's agent.

1360 (e) (i) The division need not file any document to which the interrogatories relate until
1361 the interrogatories are answered as provided in this section.

1362 (ii) Notwithstanding Subsection (1)(e)(i), the division need not file a document to
1363 which the interrogatory relates if the answers to the interrogatory disclose that the document is
1364 not in conformity with the provisions of this chapter.

1365 (f) The division shall certify to the attorney general, for such action as the attorney
1366 general considers appropriate, all interrogatories and answers to interrogatories that disclose a
1367 violation of this chapter.

1368 (2) (a) Interrogatories given by the division under Subsection (1), and the answers to
1369 interrogatories, may not be open to public inspection.

1370 (b) The division may not disclose any facts or information obtained from the
1371 interrogatories or answers to the interrogatories, except:

1372 (i) as the official duties of the division may require the facts or information to be made
1373 public; or

1374 (ii) in the event the interrogatories or the answers to the interrogatories are required for
1375 evidence in any criminal proceedings or in any other action by this state.

1376 (3) Each domestic or foreign nonprofit corporation that knowingly fails or refuses to
1377 answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given
1378 to the domestic or foreign nonprofit corporation by the division in accordance with Subsection
1379 (1) is guilty of a class C misdemeanor and, upon conviction, shall be punished by a fine of not
1380 more than \$500.

1381 (4) Each officer and director of a domestic or foreign nonprofit corporation who
1382 knowingly fails or refuses to answer truthfully and fully, within the time prescribed by
1383 Subsection (1), interrogatories given to the officer or director by the division in accordance
1384 with Subsection (1) is guilty of a class B misdemeanor and, upon conviction, shall be punished
1385 by a fine of not more than \$1,000.

1386 (5) The attorney general may enforce this section ~~[in an action brought in:]~~ by bringing
1387 an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

1388 ~~[(a) the district court of the county in this state where the nonprofit corporation's~~
1389 ~~principal office or registered office is located; or]~~

1390 ~~[(b) if the nonprofit corporation has no principal or registered office in this state, in the~~
1391 ~~district court in and for Salt Lake County.]~~

1392 Section 22. Section **16-10a-126** is amended to read:

1393 **16-10a-126. Petition for review of division's refusal to file document.**

1394 (1) (a) If the division refuses to file a document delivered to [it] the division for filing,
1395 the domestic or foreign corporation for which the filing was requested, or ~~[its representative,~~
1396 ~~within 30 days after the effective date of the notice of refusal given by the division pursuant to~~
1397 ~~Subsection 16-10a-125(3), may appeal the refusal to the district court of the county where the~~
1398 ~~corporation's principal office is or will be located, or if there is none in this state, the county~~
1399 ~~where its registered office is or will be located]~~ the corporation's representative, may petition a
1400 court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to compel the
1401 filing of the document.

1402 (b) A domestic or foreign corporation, or the corporation's representative, shall file a
1403 petition under Subsection (1)(a) within 30 days after the day on which the division gives notice
1404 of the refusal under Subsection 16-10a-125(3).

1405 (c) The [appeal is commenced by petitioning the court to compel the filing of the
1406 document and by attaching to the petition] petition under Subsection (1)(a) shall include a copy
1407 of the document and the division's notice of refusal.

1408 (2) ~~[The]~~ If a petition is filed under Subsection (1), the court may summarily order the
1409 division to file the document or take other action the court considers appropriate.

1410 (3) The court's final decision ~~[may be appealed]~~ is appealable as in any other civil
1411 proceedings.

1412 Section 23. Section **16-10a-303** is amended to read:

1413 **16-10a-303. Ultra vires.**

1414 (1) Except as provided in Subsection (2), the validity of corporate action may not be
1415 challenged on the ground that the corporation lacks or lacked power to act.

1416 (2) A corporation's power to act may be challenged:

1417 (a) in ~~[a proceeding]~~ an action by a shareholder against the corporation to enjoin the
1418 act;

1419 (b) in ~~[a proceeding]~~ an action by the corporation, directly, derivatively, or through a
1420 receiver, trustee, or other legal representative, against an incumbent or former director, officer,

1421 employee, or agent of the corporation; or

1422 (c) in [~~a proceeding~~] an action by the attorney general under Section 16-10a-1430.

1423 (3) In a shareholder's [~~proceeding~~] action under Subsection (2)(a) to enjoin an
1424 unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all
1425 affected persons are parties to the proceeding, and may award damages for loss, other than
1426 anticipated profits, suffered by the corporation or another party because of enjoining the
1427 unauthorized act.

1428 Section 24. Section 16-10a-703 is amended to read:

1429 **16-10a-703. Court-ordered meeting.**

1430 (1) [~~The district court of the county in this state where a corporation's principal office~~
1431 ~~is located or, if it has no principal office in this state, the district court for Salt Lake County]~~ A
1432 court may summarily order a meeting of shareholders to be held:

1433 (a) [~~on application of any~~] upon a petition by a shareholder of the corporation entitled
1434 to participate in an annual meeting or any director of the corporation, if an annual meeting was
1435 not held within 15 months after its last annual meeting, or if there has been no annual meeting,
1436 the date of incorporation; or

1437 (b) [~~on application of any person~~] upon a petition by a person who participated in a call
1438 of or demand for a special meeting effective under Subsection 16-10a-702(1), if:

1439 (i) notice of the special meeting was not given within 60 days after the date of the call
1440 or the date the last of the demands necessary to require the calling of the meeting was delivered
1441 to the corporation pursuant to Subsection 16-10a-702(1)(b), as the case may be; or

1442 (ii) the special meeting was not held in accordance with the notice.

1443 (2) The court may fix the time and place of the meeting, state whether or not it is an
1444 annual or special meeting, determine the shares entitled to participate in the meeting, specify a
1445 record date for determining shareholders entitled to notice of and to vote at the meeting,
1446 prescribe the form and content of the meeting notice, fix the quorum required for specific
1447 matters to be considered at the meeting, or direct that the votes represented at the meeting
1448 constitute a quorum for action on those matters, and enter other orders necessary or appropriate
1449 to accomplish the purpose or purposes of holding the meeting.

1450 Section 25. Section 16-10a-720 is amended to read:

1451 **16-10a-720. Shareholders' list for meeting.**

1452 (1) (a) After fixing a record date for a shareholders' meeting, a corporation shall
1453 prepare a list of the names of all ~~[its]~~ the corporation's shareholders who are entitled to be
1454 given notice of the meeting.

1455 (b) The list shall be arranged by voting group, and within each voting group by class or
1456 series of shares.

1457 (c) The list shall be alphabetical within each class or series and shall show the address
1458 of, and the number of shares held by, each shareholder.

1459 (2) (a) The shareholders' list shall be available for inspection by any shareholder,
1460 beginning on the earlier of 10 days before the meeting for which the list was prepared or two
1461 business days after notice of the meeting is given and continuing through the meeting and any
1462 meeting adjournments, at the corporation's principal office or at a place identified in the
1463 meeting notice in the city where the meeting will be held.

1464 (b) A shareholder or a shareholder's agent or attorney is entitled on written demand to
1465 the corporation and, subject to the requirements of Subsections 16-10a-1602(3) and (7), and the
1466 provisions of Subsections 16-10a-1603(2) and (3), to inspect and copy the list, during regular
1467 business hours and during the period ~~[it]~~ the list is available for inspection.

1468 (3) The corporation shall make the shareholders' list available at the meeting, and any
1469 shareholder, or any shareholder's agent or attorney is entitled to inspect the list at any time
1470 during the meeting or any adjournment, for any purposes germane to the meeting.

1471 (4) If the corporation refuses to allow a shareholder, or the shareholder's agent or
1472 attorney, to inspect the shareholders' list before or at the meeting, or to copy the list as
1473 permitted by Subsection (2), ~~[the district court of the county where a corporation's principal~~
1474 ~~office is located, or, if it has none in this state, the district court for Salt Lake County, on~~
1475 ~~application of the shareholder, may]~~ a court may, upon the petition of a shareholder:

1476 (a) summarily order the inspection or copying at the corporation's expense ~~[and may];~~
1477 and

1478 (b) postpone the meeting for which the list was prepared until the inspection or copying
1479 is complete.

1480 (5) If a court orders inspection or copying of the shareholders' list pursuant to
1481 Subsection (4), unless the corporation proves that ~~[it]~~ the corporation refused inspection or
1482 copying of the list in good faith because ~~[it]~~ the corporation had a reasonable basis for doubt

1483 about the right of the shareholder or the shareholder's agent or attorney to inspect or copy the
1484 shareholders' list:

1485 (a) the court shall also order the corporation to pay the shareholder's costs, including
1486 reasonable counsel fees, incurred to obtain the order;

1487 (b) the court may order the corporation to pay the shareholder for any damages
1488 incurred; and

1489 (c) the court may grant the shareholder any other remedy afforded by law.

1490 (6) If a court orders inspection or copying of the shareholders' list pursuant to
1491 Subsection (4), the court may impose reasonable restrictions on the use or distribution of the
1492 list by the shareholder.

1493 (7) Refusal or failure to prepare or make available the shareholders' list does not affect
1494 the validity of action taken at the meeting.

1495 Section 26. Section **16-10a-1330** is amended to read:

1496 **16-10a-1330. Judicial appraisal of shares -- Court action.**

1497 (1) (a) If a demand for payment under Section **16-10a-1328** remains unresolved, the
1498 corporation shall ~~[commence a proceeding]~~ bring an action in a court with jurisdiction under
1499 Title 78A, Judiciary and Judicial Administration, within 60 days after receiving the payment
1500 demand contemplated by Section **16-10a-1328**, ~~[and petition]~~ for the court to determine the fair
1501 value of the shares and the amount of interest.

1502 (b) If the corporation does not ~~[commence the proceeding]~~ bring an action within the
1503 60-day period, ~~[it]~~ the corporation shall pay each dissenter whose demand remains unresolved
1504 the amount demanded.

1505 ~~[(2) The corporation shall commence the proceeding described in Subsection (1) in the~~
1506 ~~district court of the county in this state where the corporation's principal office, or if it has no~~
1507 ~~principal office in this state, Salt Lake County. If the corporation is a foreign corporation, it~~
1508 ~~shall commence the proceeding in the county in this state where the principal office of the~~
1509 ~~domestic corporation merged with, or whose shares were acquired by, the foreign corporation~~
1510 ~~was located, or, if the domestic corporation did not have its principal office in this state at the~~
1511 ~~time of the transaction, in Salt Lake County.]~~

1512 ~~[(3)]~~ (2) (a) The corporation shall make all dissenters who have satisfied the
1513 requirements of Sections **16-10a-1321**, **16-10a-1323**, and **16-10a-1328**, whether or not they are

1514 residents of this state whose demands remain unresolved, parties to the [~~proceeding~~
1515 ~~commenced~~] action brought under Subsection [~~(2)~~] (1) as an action against their shares.

1516 (b) All such dissenters who are named as parties shall be served with a copy of the
1517 [~~petition~~] complaint.

1518 (c) (i) Service on each dissenter may be by registered or certified mail to the address
1519 stated in [~~his~~] the dissenter's payment demand made pursuant to Section 16-10a-1328.

1520 (ii) If no address is stated in the payment demand, service may be made at the address
1521 stated in the payment demand given pursuant to Section 16-10a-1323.

1522 (iii) If no address is stated in the payment demand, service may be made at the address
1523 shown on the corporation's current record of shareholders for the record shareholder holding
1524 the dissenter's shares.

1525 (iv) Service may also be made otherwise as provided by law.

1526 [~~(4)~~] (3) (a) The jurisdiction of the court in which the [~~proceeding is commenced~~]
1527 action filed under Subsection [~~(2)~~] (1) is plenary and exclusive.

1528 (b) The court may appoint one or more persons as appraisers to receive evidence and
1529 recommend decision on the question of fair value.

1530 (c) The appraisers have the powers described in the order appointing them, or in any
1531 amendment to it.

1532 (d) The dissenters are entitled to the same discovery rights as parties in other civil
1533 proceedings.

1534 [~~(5)~~] (4) Each dissenter made a party to the [~~proceeding commenced~~] action filed under
1535 Subsection [~~(2)~~] (1) is entitled to judgment:

1536 (a) for the amount, if any, by which the court finds that the fair value of [~~his~~] the
1537 dissenter's shares, plus interest, exceeds the amount paid by the corporation pursuant to Section
1538 16-10a-1325; or

1539 (b) for the fair value, plus interest, of the dissenter's after-acquired shares for which the
1540 corporation elected to withhold payment under Section 16-10a-1327.

1541 Section 27. Section 16-10a-1430 is amended to read:

1542 **16-10a-1430. Grounds and procedure for judicial dissolution.**

1543 (1) [~~A corporation may be dissolved in a proceeding by the attorney general or the~~
1544 ~~division director~~] The attorney general or the division director may bring an action in a court

1545 with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a
1546 corporation if it is established that:

1547 (a) the corporation obtained its articles of incorporation through fraud; or

1548 (b) the corporation has continued to exceed or abuse the authority conferred upon [it]
1549 the corporation by law.

1550 (2) [~~A corporation may be dissolved in a proceeding by a shareholder~~] A shareholder
1551 may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial
1552 Administration, to dissolve a corporation if it is established that:

1553 (a) the directors are deadlocked in the management of the corporate affairs, the
1554 shareholders are unable to break the deadlock, irreparable injury to the corporation is
1555 threatened or being suffered, or the business and affairs of the corporation can no longer be
1556 conducted to the advantage of the shareholders generally, because of the deadlock;

1557 (b) the directors or those in control of the corporation have acted, are acting, or will act
1558 in a manner that is illegal, oppressive, or fraudulent;

1559 (c) the shareholders are deadlocked in voting power and have failed, for a period that
1560 includes at least two consecutive annual meeting dates, to elect successors to directors whose
1561 terms have expired or would have expired upon the election of their successors; or

1562 (d) the corporate assets are being misapplied or wasted.

1563 (3) [~~A corporation may be dissolved in a proceeding by a creditor~~] A creditor may
1564 bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial
1565 Administration, to dissolve a corporation if it is established that:

1566 (a) the creditor's claim has been reduced to judgment, the execution on the judgment
1567 has been returned unsatisfied, and the corporation is insolvent; or

1568 (b) the corporation is insolvent and the corporation has admitted in writing that the
1569 creditor's claim is due and owing.

1570 (4) [~~A corporation may be dissolved in a proceeding by the corporation to have its~~] A
1571 corporation may bring an action in a court with jurisdiction under Title 78A, Judiciary and
1572 Judicial Administration, to dissolve the corporation by voluntary dissolution continued under
1573 court supervision.

1574 (5) If an action is brought under this section, it is not necessary to make shareholders
1575 parties to the action to dissolve a corporation unless relief is sought against them individually.

- 1576 (6) In a proceeding under this section, a court may:
1577 (a) issue injunctions;
1578 (b) appoint a receiver or custodian pendente lite with all powers and duties the court
1579 directs; or
1580 (c) take other action required to preserve the corporate assets wherever located and
1581 carry on the business of the corporation until a full hearing can be held.

1582 Section 28. Section **16-10a-1434** is amended to read:

1583 **16-10a-1434. Election to purchase in lieu of dissolution.**

1584 (1) In [~~a proceeding~~] an action under Subsection **16-10a-1430(2)** to dissolve a
1585 corporation that has no shares listed on a national securities exchange or regularly traded in a
1586 market maintained by one or more members of a national or affiliated securities association,
1587 the corporation may elect, or if it fails to elect, one or more shareholders may elect to purchase
1588 all shares of the corporation owned by the petitioning shareholder, at the fair value of the
1589 shares, determined as provided in this section. An election pursuant to this section is
1590 irrevocable unless the court determines that it is equitable to set aside or modify the election.

1591 (2) (a) An election to purchase pursuant to this section may be filed with the court at
1592 any time within 90 days after the filing of the [~~petition~~] action under Subsection
1593 **16-10a-1430(2)** or at any later time as the court in its discretion may allow. If the corporation
1594 files an election with the court within the 90-day period, or at any later time allowed by the
1595 court, to purchase all shares of the corporation owned by the petitioning shareholder, the
1596 corporation shall purchase the shares in the manner provided in this section.

1597 (b) If the corporation does not file an election with the court within the time period, but
1598 an election to purchase all shares of the corporation owned by the petitioning shareholder is
1599 filed by one or more shareholders within the time period, the corporation shall, within 10 days
1600 after the later of:

1601 (i) the end of the time period allowed for the filing of elections to purchase under this
1602 section; or

1603 (ii) notification from the court of an election by shareholders to purchase all shares of
1604 the corporation owned by the petitioning shareholder as provided in this section, give written
1605 notice of the election to purchase to all shareholders of the corporation, other than the
1606 petitioning shareholder. The notice shall state the name and number of shares owned by the

1607 petitioning shareholder and the name and number of shares owned by each electing
1608 shareholder. The notice shall advise any recipients who have not participated in the election of
1609 their right to join in the election to purchase shares in accordance with this section, and of the
1610 date by which any notice of intent to participate must be filed with the court.

1611 (c) Shareholders who wish to participate in the purchase of shares from the petitioning
1612 shareholder shall file notice of their intention to join in the purchase by the electing
1613 shareholders, no later than 30 days after the effective date of the corporation's notice of their
1614 right to join in the election to purchase.

1615 (d) All shareholders who have filed with the court an election or notice of their
1616 intention to participate in the election to purchase the shares of the corporation owned by the
1617 petitioning shareholder thereby become irrevocably obligated to participate in the purchase of
1618 shares from the petitioning shareholders upon the terms and conditions of this section, unless
1619 the court otherwise directs.

1620 (e) After an election has been filed by the corporation or one or more shareholders, the
1621 ~~[proceedings]~~ action under Subsection 16-10a-1430(2) may not be discontinued or settled, nor
1622 may the petitioning shareholder sell or otherwise dispose of any shares of the corporation,
1623 unless the court determines that it would be equitable to the corporation and the shareholders,
1624 other than the petitioning shareholders, to permit any discontinuance, settlement, sale, or other
1625 disposition.

1626 (3) If, within 60 days after the earlier of:

1627 (a) the corporation's filing of an election to purchase all shares of the corporation
1628 owned by the petitioning shareholder; or

1629 (b) the corporation's mailing of a notice to its shareholders of the filing of an election
1630 by the shareholders to purchase all shares of the corporation owned by the petitioning
1631 shareholder, the petitioning shareholder and electing corporation or shareholders reach
1632 agreement as to the fair value and terms of purchase of the petitioning shareholder's shares, the
1633 court shall enter an order directing the purchase of petitioner's shares, upon the terms and
1634 conditions agreed to by the parties.

1635 (4) If the parties are unable to reach an agreement as provided for in Subsection (3),
1636 upon application of any party the court shall stay the proceedings under Subsection
1637 16-10a-1430(2) and determine the fair value of the petitioning shareholder's shares as of the

1638 day before the date on which the [petition] action under Subsection 16-10a-1430(2) was filed
1639 or as of any other date the court determines to be appropriate under the circumstances and
1640 based on the factors the court determines to be appropriate.

1641 (5) (a) Upon determining the fair value of the shares of the corporation owned by the
1642 petitioning shareholder, the court shall enter an order directing the purchase of the shares upon
1643 terms and conditions the court determines to be appropriate. The terms and conditions may
1644 include payment of the purchase price in installments, where necessary in the interests of
1645 equity, provision for security to assure payment of the purchase price and any additional costs,
1646 fees, and expenses awarded by the court, and an allocation of shares among shareholders if the
1647 shares are to be purchased by shareholders.

1648 (b) In allocating the petitioning shareholders' shares among holders of different classes
1649 of shares, the court shall attempt to preserve the existing distribution of voting rights among
1650 holders of different share classes to the extent practicable. The court may direct that holders of
1651 a specific class or classes may not participate in the purchase. The court may not require any
1652 electing shareholder to purchase more of the shares of the corporation owned by the petitioning
1653 shareholder than the number of shares that the purchasing shareholder may have set forth in his
1654 election or notice of intent to participate filed with the court as the maximum number of shares
1655 he is willing to purchase.

1656 (c) Interest may be allowed at the rate and from the date determined by the court to be
1657 equitable. However, if the court finds that the refusal of the petitioning shareholder to accept
1658 an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

1659 (d) If the court finds that the petitioning shareholder had probable grounds for relief
1660 under Subsection 16-10a-1430(2)(b) or (d), it may award to the petitioning shareholder
1661 reasonable fees and expenses of counsel and experts employed by the petitioning shareholder.

1662 (6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the
1663 [petition] action to dissolve the corporation under Section 16-10a-1430, and the petitioning
1664 shareholder shall no longer have any rights or status as a shareholder of the corporation, except
1665 the right to receive the amounts awarded to him by the court. The award is enforceable in the
1666 same manner as any other judgment.

1667 (7) (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days
1668 after the date the order becomes final, unless before that time the corporation files with the

1669 court a notice of its intention to adopt articles of dissolution pursuant to Sections 16-10a-1402
1670 and 16-10a-1403. The articles of dissolution must then be adopted and filed within 50 days
1671 after notice.

1672 (b) Upon filing of the articles of dissolution, the corporation is dissolved in accordance
1673 with the provisions of Sections 16-10a-1405 through 16-10a-1408, and the order entered
1674 pursuant to Subsection (5) is no longer of any force or effect. However, the court may award
1675 the petitioning shareholder reasonable fees and expenses in accordance with the provisions of
1676 Subsection (5)(d). The petitioning shareholder may continue to pursue any claims previously
1677 asserted on behalf of the corporation.

1678 (8) Any payment by the corporation pursuant to an order under Subsection (3) or (5),
1679 other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the
1680 provisions of Section 16-10a-640.

1681 Section 29. Section 16-10a-1532 is amended to read:

1682 **16-10a-1532. Appeal from revocation.**

1683 ~~[(1) A foreign corporation may appeal the division's revocation of its authority to~~
1684 ~~transact business in this state to the district court of the county in this state where the last~~
1685 ~~registered or principal office of the corporation was located or in Salt Lake County, within 30~~
1686 ~~days after the notice of revocation is mailed under Section 16-10a-1531. The foreign~~
1687 ~~corporation appeals by petitioning the court to set aside the revocation and attaching to the~~
1688 ~~petition copies of the corporation's application for authority to transact business, and any~~
1689 ~~amended applications, each as filed with the division, and the division's notice of revocation.]~~

1690 [(2)] (1) If the division revokes a foreign corporation's authority to transact business in
1691 this state, the foreign corporation may petition a court with jurisdiction under Title 78A,
1692 Judiciary and Judicial Administration, to set aside the revocation.

1693 (2) A foreign corporation shall file a petition under Subsection (1) within 30 days after
1694 the day on which the division gives notice of the revocation under Section 16-10a-1531.

1695 (3) The petition under Subsection (1) shall include a copy of the foreign corporation's
1696 application for authority to transact business, any amended applications for authority to transact
1697 business, and the division's notice of revocation.

1698 (4) [The] If a petition is filed under Subsection (1), the court may summarily order the
1699 division to reinstate the authority of the foreign corporation to transact business in this state or

1700 [it] the court may take any other action [it] the court considers appropriate.

1701 [~~(3)~~] (5) The court's final decision [~~may be appealed~~] is appealable as in other civil
1702 proceedings.

1703 Section 30. Section **16-10a-1604** is amended to read:

1704 **16-10a-1604. Court-ordered inspection.**

1705 (1) (a) If a corporation does not allow a shareholder or director, or the shareholder's or
1706 director's agent or attorney, who complies with Subsection **16-10a-1602**(1) to inspect or copy
1707 any records required by that subsection to be available for inspection, [~~the district court of the~~
1708 ~~county in this state in which the corporation's principal office is located, or in Salt Lake County~~
1709 ~~if it has no principal office in this state, may]~~ the shareholder or director may petition a court
1710 with jurisdiction under Title 78A, Judiciary and Judicial Administration.

1711 (b) If a petition is filed under Subsection (1)(a), a court may summarily order
1712 inspection and copying of the records demanded at the corporation's expense[~~, on application~~
1713 ~~of the shareholder or director denied access to the records].~~

1714 (2) (a) If a corporation does not within a reasonable time allow a shareholder or
1715 director, or the shareholder's or director's agent or attorney, who complies with Subsections
1716 **16-10a-1602**(2) and (3), to inspect and copy any records which [~~he~~] the shareholder or director
1717 is entitled to inspect or copy by this part, [~~then upon application of the shareholder or director~~
1718 ~~denied access to the records, the district court of the county in this state where the corporation's~~
1719 ~~principal office is located or, if it has no principal office in this state, the district court for Salt~~
1720 ~~Lake County, may]~~ the shareholder or director may petition a court with jurisdiction under Title
1721 78A, Judiciary and Judicial Administration.

1722 (b) If a petition is filed under Subsection (2)(a), the court may summarily order the
1723 inspection or copying of the records demanded.

1724 (c) The court shall dispose of [~~an application~~] a petition under this subsection on an
1725 expedited basis.

1726 (3) If a court orders inspection or copying of records demanded, [it] the court shall also
1727 order the corporation to pay the shareholder's or director's costs incurred to obtain the order,
1728 including reasonable counsel fees, unless the corporation proves that it refused inspection in
1729 good faith because it had a reasonable basis for doubt about the right of the shareholder or
1730 director, or the shareholder's or director's agent or attorney, to inspect the records demanded.

1731 (4) If a court orders inspection or copying of records demanded, [it] the court may:

1732 (a) impose reasonable restrictions on the use or distribution of the records by the
1733 demanding shareholder or director;

1734 (b) order the corporation to pay the shareholder or director for any damages incurred as
1735 a result of the corporation's denial if the court determines that the corporation did not act in
1736 good faith in refusing to allow the inspection or copying;

1737 (c) if inspection or copying is ordered pursuant to Subsection (2), order the corporation
1738 to pay the expenses of inspection and copying if the court determines that the corporation did
1739 not act in good faith in refusing to allow the inspection or copying; and

1740 (d) grant the shareholder or director any other available legal remedy.

1741 Section 31. Section **16-11-13** is amended to read:

1742 **16-11-13. Purchase or redemption of shares of disqualified shareholder.**

1743 (1) (a) The articles of incorporation may provide for the purchase or redemption of the
1744 shares of any shareholder upon the failure to qualify or disqualification of that shareholder, or
1745 the same may be provided in the bylaws or by private agreement.

1746 (b) In the absence of such a provision in the articles of incorporation, the bylaws, or by
1747 private agreement, the professional corporation shall purchase the shares of a shareholder who
1748 is not qualified to own shares in the corporation within 90 days after the failure to qualify or
1749 disqualification of the shareholder.

1750 (2) The price for shares purchased under this section shall be their reasonable fair value
1751 as of the date of failure to qualify or disqualification of the shareholder.

1752 (3) (a) If the professional corporation fails to purchase shares as required by Subsection
1753 (1), any disqualified shareholder or personal representative of a disqualified shareholder may
1754 ~~[bring an action in the district court of the county in which the principal office or place of~~
1755 ~~practice of the professional corporation is located for the enforcement of this section. The~~
1756 ~~court shall have power to]~~ bring an action in a court with jurisdiction under Title 78A,
1757 Judiciary and Judicial Administration, for the enforcement of this section.

1758 (b) In an action under Subsection (3)(a), the court may:

1759 (i) award the plaintiff the reasonable fair value of [his shares, or within its jurisdiction,
1760 may order] the plaintiff's shares; or

1761 (ii) within the court's jurisdiction, order the liquidation of the professional corporation.

1762 (c) ~~[Further, if]~~ If the plaintiff is successful in the action, ~~[he shall be]~~ the plaintiff is
1763 entitled to recover a reasonable attorney's fee and costs.

1764 (4) The professional corporation shall repurchase shares as required by this section
1765 without regard to restrictions upon the repurchase of shares provided by Title 16, Chapter 10a,
1766 Utah Revised Business Corporation Act.

1767 Section 32. Section **16-16-202** is amended to read:

1768 **16-16-202. Signing and filing of records pursuant to judicial order.**

1769 (1) If a person required by this chapter to sign or deliver a record to the division for
1770 filing does not ~~[do so, the district court, upon petition of an aggrieved person, may order]~~ sign
1771 or deliver the record to the division for filing, the court may order, upon the petition of an
1772 aggrieved person:

1773 (a) the person to sign the record and deliver ~~[it]~~ the record to the division for filing; or

1774 (b) delivery of the unsigned record to the division for filing.

1775 (2) An aggrieved person under Subsection (1), other than the limited cooperative
1776 association or foreign cooperative to which the record pertains, shall make the association or
1777 foreign cooperative a party to the action brought to obtain the order.

1778 (3) An unsigned record filed pursuant to this section is effective.

1779 Section 33. Section **16-16-1203** is amended to read:

1780 **16-16-1203. Judicial dissolution.**

1781 ~~[The district court may dissolve a limited cooperative association or order any action~~
1782 ~~that under the circumstances is appropriate and equitable:]~~

1783 (1) ~~[in a proceeding initiated by the attorney general,]~~ The attorney general may bring
1784 an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to
1785 dissolve a limited cooperative association if:

1786 (a) the association obtained ~~[its]~~ the association's articles of organization through
1787 fraud; or

1788 (b) the association has continued to exceed or abuse the authority conferred upon ~~[it]~~
1789 the corporation by law~~[-or]~~.

1790 (2) ~~[in a proceeding initiated by a member,]~~ A member may bring an action in a court
1791 with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a limited
1792 cooperative association if:

1793 (a) the directors are deadlocked in the management of the association's affairs, the
1794 members are unable to break the deadlock, and irreparable injury to the association is occurring
1795 or is threatened because of the deadlock;

1796 (b) the directors or those in control of the association have acted, are acting, or will act
1797 in a manner that is illegal, oppressive, or fraudulent;

1798 (c) the members are deadlocked in voting power and have failed to elect successors to
1799 directors whose terms have expired for two consecutive periods during which annual members
1800 meetings were held or were to be held; or

1801 (d) the assets of the association are being misapplied or wasted.

1802 (3) If an action is brought under this section, a court may dissolve a limited cooperative
1803 association or order an action that under the circumstances is appropriate or equitable.

1804 Section 34. Section **16-16-1206** is amended to read:

1805 **16-16-1206. Winding up.**

1806 (1) A limited cooperative association continues after dissolution only for purposes of
1807 winding up ~~[its]~~ the association's activities.

1808 (2) In winding up a limited cooperative association's activities, the board of directors
1809 shall cause the association to:

1810 (a) discharge ~~[its]~~ the association's liabilities, settle and close ~~[its]~~ the association's
1811 activities, and marshal and distribute ~~[its]~~ the association's assets;

1812 (b) preserve the association or its property as a going concern for no more than a
1813 reasonable time;

1814 (c) prosecute and defend actions and proceedings;

1815 (d) transfer association property; and

1816 (e) perform other necessary acts.

1817 (3) After dissolution and upon application of a limited cooperative association, a
1818 member, or a holder of financial rights, ~~[the district court]~~ a court may order judicial
1819 supervision of the winding up of the association, including the appointment of a person to wind
1820 up the association's activities, if:

1821 (a) after a reasonable time, the association has not wound up ~~[its]~~ the association's
1822 activities; or

1823 (b) the applicant establishes other good cause.

1824 (4) If a person is appointed pursuant to Subsection (3) to wind up the activities of a
1825 limited cooperative association, the association shall promptly deliver to the division for filing
1826 an amendment to the articles of organization to reflect the appointment.

1827 Section 35. Section **16-16-1210** is amended to read:

1828 **16-16-1210. Court proceeding.**

1829 (1) [~~Upon application~~] Upon a petition by a dissolved limited cooperative association
1830 that has published a notice under Section **16-16-1209**, [~~the district court in the county where~~
1831 ~~the association's principal office is located or, if the association does not have a principal office~~
1832 ~~in this state where its designated office in this state is located,] a court with jurisdiction under
1833 Title 78A, Judiciary and Judicial Administration, may determine the amount and form of
1834 security to be provided for payment of claims against the association that are contingent, have
1835 not been made known to the association, or are based on an event occurring after the effective
1836 date of dissolution but that, based on the facts known to the association, are reasonably
1837 anticipated to arise after the effective date of dissolution.~~

1838 (2) Not later than 10 days after filing [~~an application~~] a petition under Subsection (1), a
1839 dissolved limited cooperative association shall give notice of the proceeding to each known
1840 claimant holding a contingent claim.

1841 (3) (a) The court may appoint a representative in a proceeding brought under this
1842 section to represent all claimants whose identities are unknown.

1843 (b) The dissolved limited cooperative association shall pay reasonable fees and
1844 expenses of the representative, including all reasonable attorney and expert witness fees.

1845 (4) Provision by the dissolved limited cooperative association for security in the
1846 amount and the form ordered by the court satisfies the association's obligations with respect to
1847 claims that are contingent, have not been made known to the association, or are based on an
1848 event occurring after the effective date of dissolution, and the claims may not be enforced
1849 against a member that received a distribution.

1850 Section 36. Section **24-1-103** is amended to read:

1851 **24-1-103. Venue.**

1852 [(+)] In addition to the venue provided for under [~~Title 78B, Chapter 3, Part 3, Place of~~
1853 ~~Trial -- Venue~~] Title 78B, Chapter 3a, Venue for Civil Actions, or any other provisions of law,
1854 a proceeding under this title may be maintained in the judicial district in which:

1855 ~~[(a)]~~ (1) the property is seized;
1856 ~~[(b)]~~ (2) any part of the property is found; or
1857 ~~[(c)]~~ (3) a civil or criminal action could be maintained against a claimant for the
1858 offense subjecting the property to forfeiture under this title.

1859 ~~[(2) A claimant may obtain a change of venue under Section 78B-3-309:]~~
1860 Section 37. Section **31A-1-401** is enacted to read:

1861 **Part 4. Venue**

1862 **31A-1-401. Venue for action or petition filed by commissioner.**

1863 If the commissioner brings an action under this title in the district court, the
1864 commissioner shall bring the action:

- 1865 (1) in accordance with Title 78B, Chapter 3a, Venue for Civil Actions; or
- 1866 (2) in Salt Lake County.

1867 Section 38. Section **31A-2-305** is amended to read:

1868 **31A-2-305. Immunity from prosecution.**

1869 (1) ~~(a)~~ If a natural person declines to appear, testify, or produce any record or document
1870 in any proceeding instituted by the commissioner or in obedience to the subpoena of the
1871 commissioner, the commissioner may ~~[apply to a judge of the district court where the~~
1872 ~~proceeding is held] petition a court with jurisdiction under Title 78A, Judiciary and Judicial~~
1873 Administration, for an order to the person to attend, testify, or produce records or documents as
1874 requested by the commissioner.

1875 ~~(b)~~ In the event a witness asserts a privilege against self-incrimination, testimony and
1876 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of
1877 Immunity.

1878 (2) If a person claims the privilege against self-incrimination and refuses to appear,
1879 testify, or produce documents in response to probative evidence against ~~[him]~~ the person in a
1880 proceeding to revoke or suspend ~~[his]~~ the person's license, and if the testimony or documents
1881 would have been admissible as evidence in a court of law except for the Fifth Amendment
1882 privilege, the refusal to appear, testify, or produce documents is, for noncriminal proceedings
1883 only, rebuttable evidence of the facts on which the proceeding is based.

1884 Section 39. Section **31A-5-414** is amended to read:

1885 **31A-5-414. Transactions in which directors and others are interested.**

1886 (1) Any material transaction between an insurance corporation and one or more of its
1887 directors or officers, or between an insurance corporation and any other person in which one or
1888 more of its directors or officers or any person controlling the corporation has a material
1889 interest, is voidable by the corporation unless all the following exist:

1890 (a) At the time the transaction is entered into it is fair to the interests of the corporation.

1891 (b) The transaction has, with full knowledge of its terms and of the interests involved,
1892 been approved in advance by the board or by the shareholders.

1893 (c) The transaction has been reported to the commissioner immediately after approval
1894 by the board or the shareholders.

1895 (2) A director, whose interest or status makes the transaction subject to this section,
1896 may be counted in determining a quorum for a board meeting approving a transaction under
1897 Subsection (1)(b), but may not vote. Approval requires the affirmative vote of a majority of
1898 those present.

1899 (3) (a) The commissioner may by rule exempt certain types of transactions from the
1900 reporting requirement of Subsection (1)(c).

1901 (b) The commissioner has standing to bring an action on behalf of an insurer to have a
1902 contract in violation of Subsection (1) declared void. [~~Such an action shall be brought in the
1903 Third Judicial District Court for Salt Lake County.~~]

1904 Section 40. Section **31A-5-415** is amended to read:

1905 **31A-5-415. Officers', directors', and employees' liability and indemnification.**

1906 (1) (a) Section **16-10a-841** applies to the liabilities of directors of a stock corporation.

1907 (b) Subsection **16-6a-825(3)** applies to loans to trustees and officers of a mutual.

1908 (c) A director who votes for or assents to a violation of Subsection **16-6a-825(3)** or
1909 Section **16-10a-842** is jointly and severally liable to the corporation for any loss on the
1910 distribution.

1911 (2) (a) Title 16, Chapter 10a, Part 9, Indemnification, applies to stock and mutual
1912 corporations, but no indemnification may be paid until 30 or more days after sending a notice
1913 to the commissioner of the full details of the proposed indemnification.

1914 (b) The commissioner may bring an action [~~in Third Judicial District Court for Salt
1915 Lake County~~] in a court with jurisdiction under Title 78A, Judiciary and Judicial
1916 Administration, to have such indemnification enjoined.

1917 (c) The court may enjoin the indemnification to the extent ~~[it]~~ the indemnification
1918 would render the insurer in a hazardous condition, or exacerbate an existing financially
1919 hazardous condition.

1920 Section 41. Section **31A-15-211** is amended to read:

1921 **31A-15-211. Enforcement authority.**

1922 (1) (a) The commissioner is authorized to use the powers established for the
1923 department under this title to enforce the laws of this state not specifically preempted by the
1924 Liability Risk Retention Act of 1986, including the commissioner's administrative authority to
1925 investigate, issue subpoena, conduct depositions and hearings, issue orders, impose monetary
1926 penalties and seek injunctive relief.

1927 (b) With regard to any investigation, administrative proceedings, or litigation, the
1928 commissioner shall rely on the procedural laws of this state.

1929 (2) (a) Whenever the commissioner determines that any person, risk retention group,
1930 purchasing group, or insurer of a purchasing group has violated, is violating, or is about to
1931 violate any provision of this part or any other insurance law of this state applicable to the
1932 person or entity, or that the person or entity has failed to comply with a lawful order of the
1933 commissioner, ~~[he]~~ the commissioner may, in addition to any other lawful remedies or
1934 penalties, ~~[file a complaint in the Third District Court of Salt Lake County]~~ bring an action in a
1935 court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enjoin and
1936 restrain any person, risk retention group, purchasing group, or insurer from engaging in the
1937 violation, or to compel compliance with the order of the commissioner. ~~[The court has~~
1938 ~~jurisdiction of the proceeding and has the power to enter a judgment and order for injunctive or~~
1939 ~~other relief.]~~

1940 (b) ~~[In any action by the commissioner under this subsection]~~ In an action by the
1941 commissioner under Subsection (2)(a), service of process shall be made upon the director of
1942 the Division of Corporations and Commercial Code who shall forward the order, pleadings, or
1943 other process to the person, risk retention group, purchasing group, or insurer in accordance
1944 with the procedures specified in Section [31A-14-204](#).

1945 (c) Nothing in this section may be construed to limit or abridge the authority of the
1946 commissioner to seek injunctive relief in any district court of the United States as provided in
1947 Section [31A-15-213](#).

1948 (3) In an action under this section, a court has the power to enter a judgment and order
1949 for injunctive or other relief.

1950 Section 42. Section **31A-16-107.5** is amended to read:

1951 **31A-16-107.5. Examination of registered insurers.**

1952 (1) Subject to the limitation contained in this section and the powers which the
1953 commissioner has under Chapter 2, Administration of the Insurance Laws, relating to the
1954 examination of insurers, the commissioner has the power to examine an insurer registered
1955 under Section **31A-16-105** and its affiliates to ascertain the financial condition of the insurer,
1956 including the enterprise risk to the insurer by the ultimate controlling party, or by the insurance
1957 holding company system on a consolidated basis.

1958 (2) (a) The commissioner may order an insurer registered under Section **31A-16-105** to
1959 produce the records, books, or other information papers in the possession of the insurer or its
1960 affiliates as are reasonably necessary to determine compliance with this chapter.

1961 (b) To determine compliance with this chapter, the commissioner may order an insurer
1962 registered under Section **31A-16-105** to produce information not in the possession of the
1963 insurer if the insurer can obtain access to the information pursuant to contractual relationships,
1964 statutory obligations, or other methods.

1965 (c) If an insurer cannot obtain the information requested by the commissioner, the
1966 insurer shall provide the commissioner a detailed explanation of the reason that the insurer
1967 cannot obtain the information and the identity of the holder of the information.

1968 (d) Whenever it appears to the commissioner that the detailed explanation is without
1969 merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of
1970 \$5,000 for each day's delay, or may suspend or revoke the insurer's license.

1971 (3) The commissioner may retain, at the registered insurer's expense, attorneys,
1972 actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, if
1973 they are necessary to assist in the conduct of the examination under Subsection (1). Any
1974 persons so retained are under the direction and control of the commissioner and shall act in a
1975 purely advisory capacity.

1976 (4) A registered insurer who produces records, books, and papers under Subsection
1977 [~~(1)~~] (2) for examination is liable for and shall pay the expense of the examination under
1978 Section **31A-2-205**.

1979 (5) If an insurer fails to comply with an order issued under this section, the
1980 commissioner may:

1981 (a) examine the affiliates to obtain the information; or

1982 (b) issue subpoenas, administer oaths, and examine under oath any person for purposes
1983 of determining compliance with this section.

1984 (6) (a) Upon the failure or refusal of any person to obey a subpoena under Subsection
1985 (5), the commissioner may [~~petition the Third District Court of Salt Lake County~~] petition a
1986 court to enter an order compelling the witness to appear and testify or produce documentary
1987 evidence.

1988 (b) A person shall be obliged to attend as a witness at the place specified in the
1989 subpoena, when subpoenaed, anywhere within the state.

1990 (c) A person subpoenaed is entitled to the same fees and mileage [~~, if claimed, as a~~
1991 ~~witness in the Third District Court of Salt Lake County, which fees,~~] as a witness under Section
1992 78B-1-119.

1993 (d) Fees, mileage, and actual expense, if any, necessarily incurred in securing the
1994 attendance of witnesses, and [~~their~~] the witness's testimony, shall be itemized and charged
1995 against, and be paid by, the company being examined.

1996 Section 43. Section **31A-16-110** is amended to read:

1997 **31A-16-110. Enjoining violations -- Voting securities acquired in violation of law**
1998 **or rule.**

1999 (1) (a) Whenever it appears to the commissioner that any insurer or any director,
2000 officer, employee, or agent of an insurer has committed or is about to commit a violation of this
2001 chapter or any rule or order issued by the commissioner under this chapter, the commissioner
2002 may [~~apply to the district court of the county in which the principal office of the insurer is~~
2003 ~~located, or if the insurer has no principal office in this state, then to the Third District Court of~~
2004 ~~Salt Lake County;~~] petition a court for an order enjoining the insurer or a director, officer,
2005 employee, or agent of the insurer from the violation.

2006 (b) The commissioner may also request other equitable relief which the nature of the
2007 case and the interest of the insurer's policyholders, creditors, and shareholders or the public
2008 require.

2009 (2) (a) No security which is the subject of any agreement or arrangement regarding

2010 acquisition, or which is acquired or to be acquired, in contravention of the provisions of this
2011 chapter or any rule or order issued by the commissioner under this chapter, may be voted at any
2012 shareholders' meeting, or may be counted for quorum purposes.

2013 (b) Any action of shareholders requiring the affirmative vote of a percentage of shares
2014 may be taken as though those securities were not issued and outstanding.

2015 (c) However, no action taken at that shareholders' meeting is invalidated by the voting
2016 of those securities, unless the action would materially affect control of the insurer or unless the
2017 [~~district~~] court has ordered that voting invalidates the action.

2018 (d) If an insurer or the commissioner has reason to believe that any security of the
2019 insurer has been or is about to be acquired in contravention of the provisions of this chapter or
2020 any rule or order issued by the commissioner under this chapter, the insurer or the
2021 commissioner may [~~apply to the Third District Court of Salt Lake County or to the district~~
2022 ~~court for the county in which the insurer has its principal place of business,]~~ petition a court to
2023 enjoin any offer, request, invitation, or agreement of acquisition which is made in
2024 contravention of Section 31A-16-103 or any rule or order issued by the commissioner under
2025 this chapter to enjoin the voting of that acquired security.

2026 (e) [~~This court order may also~~] On a petition under Subsection (2)(d), a court may:

2027 (i) void any vote of that security if the vote has already been cast at any meeting of
2028 shareholders[~~, and the court may~~]; and

2029 (ii) grant other equitable relief which the nature of the case and the interests of the
2030 insurer's policyholders, creditors, and shareholders or the public require.

2031 [~~(3) Upon the application of the insurer or the commissioner, if a person has acquired~~
2032 ~~or is proposing to acquire any voting securities in violation of this chapter or of any rule or~~
2033 ~~order issued by the commissioner under this chapter, the Third District Court of Salt Lake~~
2034 ~~County or the district court for the county in which the insurer has its principal place of~~
2035 ~~business may, upon the notice which the court deems appropriate,]~~

2036 (3) (a) If a person has acquired or is proposing to acquire any voting securities in
2037 violation of this chapter or in violation of a rule or order issued by the commissioner under this
2038 chapter, the insurer or the commissioner may petition a court with jurisdiction under Title 78A,
2039 Judiciary and Judicial Administration.

2040 (b) If a petition is filed under Subsection (3)(a), a court may:

2041 (i) seize or sequester any voting securities of the insurer owned directly or indirectly by
2042 that person~~[-and]; and~~

2043 (ii) issue orders with respect to that person and those securities which the court
2044 considers appropriate to effectuate the provisions of this chapter.

2045 (c) A petitioner under Subsection (3)(a) shall provide notice that the court deems
2046 appropriate.

2047 (4) For the purposes of this chapter, the situs of the ownership of the securities of
2048 domestic insurers is considered to be in this state.

2049 Section 44. Section **31A-16-111** is amended to read:

2050 **31A-16-111. Required sale of improperly acquired stock -- Penalties.**

2051 (1) If the commissioner finds that the acquiring person has not substantially complied
2052 with the requirements of this chapter in acquiring control of a domestic insurer, the
2053 commissioner may require the acquiring person to sell the acquiring person's stock of the
2054 domestic insurer in the manner specified in Subsection (2).

2055 (2) (a) The commissioner shall effect the sale required by Subsection (1) in the manner
2056 which, under the particular circumstances, appears most likely to result in the payment of the
2057 full market value for the stock by persons who have the collective competence, experience,
2058 financial resources, and integrity to obtain approval under Subsection **31A-16-103**(8).

2059 (b) Sales made under this section are subject to approval by [~~the Third Judicial District~~
2060 ~~Court for Salt Lake County~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2061 Administration, which court has the authority to effect the terms of the sale.

2062 (3) The proceeds from sales made under this section shall be distributed first to the
2063 person required by this section to sell the stock, but only up to the amount originally paid by
2064 the person for the securities. Additional sale proceeds shall be paid to the General Fund.

2065 (4) The person required to sell and persons related to or affiliated with the seller may
2066 not purchase the stock at the sale conducted under this section.

2067 (5) (a) A director or officer of an insurance holding company system violates this
2068 chapter if the director or officer knowingly:

2069 (i) participates in or assents to a transaction or investment that:

2070 (A) has not been properly reported or submitted pursuant to:

2071 (I) Subsections **31A-16-105**(1) and (2); or

2072 (II) Subsection 31A-16-106(1)(b); or
2073 (B) otherwise violates this chapter; or
2074 (ii) permits any of the officers or agents of the insurer to engage in a transaction or
2075 investment described in Subsection (5)(a)(i).
2076 (b) A director or officer in violation of Subsection (5)(a) shall pay, in the director's or
2077 officer's individual capacity, a civil penalty of not more than \$20,000 per violation:
2078 (i) upon a finding by the commissioner of a violation; and
2079 (ii) after notice and hearing before the commissioner.
2080 (c) In determining the amount of the civil penalty under Subsection (5)(b), the
2081 commissioner shall take into account:
2082 (i) the appropriateness of the penalty with respect to the gravity of the violation;
2083 (ii) the history of previous violations; and
2084 (iii) any other matters that justice requires.
2085 (6) (a) When it appears to the commissioner that any insurer or any director, officer,
2086 employee, or agent of the insurer, has committed a willful violation of this chapter, the
2087 commissioner may ~~[cause criminal proceedings to be instituted:]~~ refer the violation to the
2088 appropriate prosecutor.
2089 ~~[(i) (A) in the district court for the county in this state in which the principal office of~~
2090 ~~the insurer is located; or]~~
2091 ~~[(B) if the insurer has no principal office in this state, in the Third District Court for~~
2092 ~~Salt Lake County; and]~~
2093 ~~[(ii) against the insurer or the responsible director, officer, employee, or agent of the~~
2094 ~~insurer.]~~
2095 (b) (i) An insurer that willfully violates this chapter may be fined not more than
2096 \$20,000.
2097 (ii) Any individual who willfully violates this chapter is guilty of a third degree felony,
2098 and upon conviction may be:
2099 (A) fined in that person's individual capacity not more than \$5,000;
2100 (B) imprisoned; or
2101 (C) both fined and imprisoned.
2102 (7) This section does not limit the other sanctions applicable to violations of this title

2103 under Section 31A-2-308.

2104 Section 45. Section 31A-16-112 is amended to read:

2105 **31A-16-112. Sanctions.**

2106 (1) (a) Notwithstanding Section 31A-2-308, the following sanctions apply:

2107 (i) An insurer failing, without just cause, to file a registration statement required by this
2108 chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to
2109 be recovered by the commissioner and the penalty so recovered shall be paid into the General
2110 Fund.

2111 (ii) The maximum penalty under this section is \$250,000.

2112 (b) The commissioner may reduce the penalty if the insurer demonstrates to the
2113 commissioner that the imposition of the penalty would constitute a financial hardship to the
2114 insurer.

2115 (2) (a) A director or officer of an insurance holding company system who knowingly
2116 violates, participates in, or assents to, or who knowingly shall permit any of the officers or
2117 agents of the insurer to engage in transactions or make investments that have not been properly
2118 reported or submitted pursuant to Subsection 31A-16-105(1), 31A-16-106(1)(b), or
2119 31A-16-106(2), or that violates this chapter, shall pay, in the director's or officer's individual
2120 capacity, a civil forfeiture of not more than \$10,000 per violation, notwithstanding Section
2121 31A-2-308, after notice and hearing before the commissioner.

2122 (b) In determining the amount of the civil forfeiture, the commissioner shall take into
2123 account the appropriateness of the forfeiture with respect to the gravity of the violation, the
2124 history of previous violations, and such other matters as justice may require.

2125 (3) (a) Whenever it appears to the commissioner that any insurer subject to this chapter
2126 or a director, officer, employee, or agent of the insurer has engaged in any transaction or
2127 entered into a contract that is subject to Section 31A-16-106 and that would not have been
2128 approved had the approval been requested, the commissioner may order the insurer to cease
2129 and desist immediately any further activity under that transaction or contract.

2130 (b) After notice and hearing, the commissioner may also order the insurer to void any
2131 contract and restore the status quo if the action is in the best interest of the policyholders,
2132 creditors, or the public.

2133 (4) (a) Whenever it appears to the commissioner that an insurer or any director, officer,

2134 employee, or agent of the insurer has committed a willful violation of this chapter, the
2135 commissioner may refer the [case] violation to the appropriate prosecutor. [~~Venue for the~~
2136 ~~criminal action shall be in the Third District Court of Salt Lake County, against the insurer or~~
2137 ~~the responsible director, officer, employee, or agent of the insurer.~~]

2138 (b) An insurer that willfully violates this chapter may be fined not more than \$250,000
2139 notwithstanding Section 31A-2-308.

2140 (c) An individual who willfully violates this chapter may be fined in the individual's
2141 individual capacity not more than \$100,000 notwithstanding Section 31A-2-308 and is guilty of
2142 a third-degree felony.

2143 (5) (a) An officer, director, or employee of an insurance holding company system who
2144 willfully and knowingly subscribes to or makes or causes to be made any false statements, false
2145 reports, or false filings with the intent to deceive the commissioner in the performances of the
2146 commissioner's duties under this chapter, is guilty of a third-degree felony.

2147 (b) Any fines imposed shall be paid by the officer, director, or employee in the
2148 officer's, director's, or employee's individual capacity.

2149 (6) Whenever it appears to the commissioner that a person has committed a violation
2150 of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the
2151 insurer by affiliates or by the insurance holding company system, the violation may serve as an
2152 independent basis for disapproving dividends or distributions and for placing the insurer under
2153 an order of supervision in accordance with Section 31A-27-503.

2154 Section 46. Section 31A-16-117 is amended to read:

2155 **31A-16-117. Judicial review -- Mandamus.**

2156 (1) A person aggrieved by an act, determination, rule, or order or any other action of
2157 the commissioner pursuant to this chapter may seek judicial review in accordance with Title
2158 63G, Chapter 4, Administrative Procedures Act.

2159 (2) The filing of an appeal pursuant to this section shall stay the application of any rule,
2160 order, or other action of the commissioner to the appealing party unless the court, after giving
2161 party notice and an opportunity to be heard, determines that a stay would be detrimental to the
2162 interest of policyholders, shareholders, creditors, or the public.

2163 (3) A person aggrieved by a failure of the commissioner to act or make a determination
2164 required by this chapter may petition [~~the Third District Court of~~] the district court in Salt Lake

2165 County for writ in the nature of a mandamus or a peremptory mandamus directing the
2166 commissioner to act or make a determination.

2167 Section 47. Section **31A-17-610** is amended to read:

2168 **31A-17-610. Foreign insurers or health organizations.**

2169 (1) (a) Any foreign insurer or health organization shall, upon the written request of the
2170 commissioner, submit to the commissioner an RBC report as of the end of the most recent
2171 calendar year by the later of:

2172 (i) the date an RBC report would be required to be filed by a domestic insurer or health
2173 organization under this part; or

2174 (ii) 15 days after the request is received by the foreign insurer or health organization.

2175 (b) Any foreign insurer or health organization shall, at the written request of the
2176 commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with
2177 the insurance commissioner of any other state.

2178 (2) (a) The commissioner may require a foreign insurer or health organization to file an
2179 RBC plan with the commissioner if:

2180 (i) there is a company action level event, regulatory action level event, or authorized
2181 control level event with respect to the foreign insurer or health organization as determined
2182 under:

2183 (A) the RBC statute applicable in the state of domicile of the insurer or health
2184 organization; or

2185 (B) if no RBC statute is in force in that state, under this part; and

2186 (ii) the insurance commissioner of the state of domicile of the foreign insurer or health
2187 organization fails to require the foreign insurer or health organization to file an RBC plan in the
2188 manner specified under:

2189 (A) that state's RBC statute; or

2190 (B) if no RBC statute is in force in that state, under Section [31A-17-603](#).

2191 (b) If the commissioner requires a foreign insurer or health organization to file an RBC
2192 plan, the failure of the foreign insurer or health organization to file the RBC plan with the
2193 commissioner is grounds to order the insurer or health organization to cease and desist from
2194 writing new insurance business in this state.

2195 (3) The commissioner may ~~[make application to the Third District Court for Salt Lake~~

2196 County] petition a court as permitted under Section 31A-27a-901 with respect to the
2197 liquidation of property of a foreign insurer or health organization found in this state if:

2198 (a) a mandatory control level event occurs with respect to any foreign insurer or health
2199 organization; and

2200 (b) no domiciliary receiver has been appointed with respect to the foreign insurer or
2201 health organization under the rehabilitation and liquidation statute applicable in the state of
2202 domicile of the foreign insurer or health organization.

2203 Section 48. Section 31A-27a-105 is amended to read:

2204 **31A-27a-105. Jurisdiction.**

2205 (1) (a) A delinquency proceeding under this chapter may not be commenced by a
2206 person other than the commissioner of this state.

2207 (b) No court has jurisdiction to entertain, hear, or determine a delinquency proceeding
2208 commenced by any person other than the commissioner of this state.

2209 (2) Other than in accordance with this chapter, a court of this state has no jurisdiction
2210 to entertain, hear, or determine any complaint:

2211 (a) requesting the liquidation, rehabilitation, seizure, sequestration, or receivership of
2212 an insurer; or

2213 (b) requesting a stay, an injunction, a restraining order, or other relief preliminary to,
2214 incidental to, or relating to a delinquency proceeding.

2215 (3) (a) The receivership court, as of the commencement of a delinquency proceeding
2216 under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located,
2217 including property located outside the territorial limits of the state.

2218 (b) The receivership court has original but not exclusive jurisdiction of all civil
2219 proceedings arising:

2220 (i) under this chapter; or

2221 (ii) in or related to a delinquency proceeding under this chapter.

2222 (4) In addition to other grounds for jurisdiction provided by the law of this state, a
2223 court of this state having jurisdiction of the subject matter has jurisdiction over a person served
2224 pursuant to the Utah Rules of Civil Procedure or other applicable provisions of law in an action
2225 brought by the receiver if the person served:

2226 (a) in an action resulting from or incident to a relationship with the insurer described in

2227 this Subsection (4)(a), is or has been an agent, broker, or other person who has at any time:

2228 (i) written a policy of insurance for an insurer against which a delinquency proceeding
2229 is instituted; or

2230 (ii) acted in any manner whatsoever on behalf of an insurer against which a
2231 delinquency proceeding is instituted;

2232 (b) in an action on or incident to a reinsurance contract described in this Subsection
2233 (4)(b):

2234 (i) is or has been an insurer or reinsurer who has at any time entered into the contract of
2235 reinsurance with an insurer against which a delinquency proceeding is instituted; or

2236 (ii) is an intermediary, agent, or broker of or for the reinsurer, or with respect to the
2237 contract;

2238 (c) in an action resulting from or incident to a relationship with the insurer described in
2239 this Subsection (4)(c), is or has been an officer, director, manager, trustee, organizer, promoter,
2240 or other person in a position of comparable authority or influence over an insurer against which
2241 a delinquency proceeding is instituted;

2242 (d) in an action concerning assets described in this Subsection (4)(d), is or was at the
2243 time of the institution of the delinquency proceeding against the insurer, holding assets in
2244 which the receiver claims an interest on behalf of the insurer; or

2245 (e) in any action on or incident to the obligation described in this Subsection (4)(e), is
2246 obligated to the insurer in any way whatsoever.

2247 (5) (a) Subject to Subsection (5)(b), service shall be made upon the person named in
2248 the petition in accordance with the Utah Rules of Civil Procedure.

2249 (b) In lieu of service under Subsection (5)(a), upon application to the receivership
2250 court, service may be made in such a manner as the receivership court directs whenever it is
2251 satisfactorily shown by the commissioner's affidavit:

2252 (i) in the case of a corporation, that the officers of the corporation cannot be served
2253 because they have departed from the state or have otherwise concealed themselves with intent
2254 to avoid service;

2255 (ii) in the case of an insurer whose business is conducted, at least in part, by an
2256 attorney-in-fact, managing general agent, or other similar entity including a reciprocal, Lloyd's
2257 association, or interinsurance exchange, that the individual attorney-in-fact, managing general

2258 agent, or other entity, or its officers of the corporate attorney-in-fact cannot be served because
2259 of the individual's departure or concealment; or

2260 (iii) in the case of a natural person, that the person cannot be served because of the
2261 person's departure or concealment.

2262 (6) If the receivership court on motion of any party finds that an action should as a
2263 matter of substantial justice be tried in a forum outside this state, the receivership court may
2264 enter an ~~[appropriate]~~ order to stay further proceedings on the action in this state.

2265 (7) (a) Nothing in this chapter deprives a reinsurer of any contractual right to pursue
2266 arbitration except:

2267 (i) as to a claim against the estate; and

2268 (ii) in regard to a contract rejected by the receiver under Section 31A-27a-113.

2269 (b) A party in arbitration may bring a claim or counterclaim against the estate, but the
2270 claim or counterclaim is subject to this chapter.

2271 ~~[(8) An action authorized by this chapter shall be brought in the Third District Court
2272 for Salt Lake County.]~~

2273 ~~[(9)]~~ (8) (a) At any time after an order is entered pursuant to Section 31A-27a-201,
2274 31A-27a-301, or 31A-27a-401, the commissioner or receiver may transfer the case to the
2275 county of the principal office of the person proceeded against.

2276 (b) In the event of a transfer under this Subsection ~~[(9)]~~ (8), the court in which the
2277 proceeding is commenced shall, upon application of the commissioner or receiver, direct its
2278 clerk to transmit the court's file to the clerk of the court to which the case is to be transferred.

2279 (c) After a transfer under this Subsection ~~[(9)]~~ (8), the proceeding shall be conducted in
2280 the same manner as if ~~[it]~~ the proceeding had been commenced in the court to which the matter
2281 is transferred.

2282 ~~[(10)]~~ (9) (a) Except as provided in Subsection ~~[(10)(c)]~~ (9)(c), a person may not
2283 intervene in a liquidation proceeding in this state for the purpose of seeking or obtaining
2284 payment of a judgment, lien, or other claim of any kind.

2285 (b) Except as provided in Subsection ~~[(10)(c)]~~ (9)(c), the claims procedure set for this
2286 chapter constitute the exclusive means for obtaining payment of claims from the liquidation
2287 estate.

2288 (c) (i) An affected guaranty association or the affected guaranty association's

2289 representative may intervene as a party as a matter of right and otherwise appear and participate
2290 in any court proceeding concerning a liquidation proceeding against an insurer.

2291 (ii) Intervention by an affected guaranty association or by an affected guaranty
2292 association's designated representative conferred by this Subsection [~~(10)(c)~~] (9)(c) may not
2293 constitute grounds to establish general personal jurisdiction by the courts of this state.

2294 (iii) An intervening affected guaranty association or the affected guaranty association's
2295 representative are subject to the receivership court's jurisdiction for the limited purpose for
2296 which the affected guaranty association intervenes.

2297 [~~(11)~~] (10) (a) Notwithstanding the other provisions of this section, this chapter does
2298 not confer jurisdiction on the receivership court to resolve coverage disputes between an
2299 affected guaranty association and those asserting claims against the affected guaranty
2300 association resulting from the initiation of a receivership proceeding under this chapter, except
2301 to the extent that the affected guaranty association otherwise expressly consents to the
2302 jurisdiction of the receivership court pursuant to a plan of rehabilitation or liquidation that
2303 resolves its obligations to covered policyholders.

2304 (b) The determination of a dispute with respect to the statutory coverage obligations of
2305 an affected guaranty association by a court or administrative agency or body with jurisdiction
2306 in the affected guaranty association's state of domicile is binding and conclusive as to the
2307 affected guaranty association's claim in the liquidation proceeding.

2308 [~~(12)~~] (11) Upon the request of the receiver, the receivership court or the presiding
2309 judge of the [~~Third District Court for Salt Lake County~~] court with jurisdiction under Title
2310 78A, Judiciary and Judicial Administration, may order that one judge hear all cases and
2311 controversies arising out of or related to the delinquency proceeding.

2312 [~~(13)~~] (12) A delinquency proceeding is exempt from any program maintained for the
2313 early closure of civil actions.

2314 [~~(14)~~] (13) In a proceeding, case, or controversy arising out of or related to a
2315 delinquency proceeding, to the extent there is a conflict between the Utah Rules of Civil
2316 Procedure and this chapter, the provisions of this chapter govern the proceeding, case, or
2317 controversy.

2318 Section 49. Section **31A-27a-201** is amended to read:

2319 **31A-27a-201. Receivership court's seizure order.**

2320 (1) The commissioner may [~~file in the Third District Court for Salt Lake County a~~
2321 ~~petition~~] petition a court with jurisdiction under Title 78A, Judiciary and Judicial
2322 Administration:

2323 (a) with respect to:

2324 (i) an insurer domiciled in this state;

2325 (ii) an unauthorized insurer; or

2326 (iii) pursuant to Section 31A-27a-901, a foreign insurer;

2327 (b) alleging that:

2328 (i) there exists grounds that would justify a court order for a formal delinquency
2329 proceeding against the insurer under this chapter; and

2330 (ii) the interests of policyholders, creditors, or the public will be endangered by delay;

2331 and

2332 (c) setting forth the contents of a seizure order considered necessary by the
2333 commissioner.

2334 (2) (a) Upon a filing under Subsection (1), the receivership court may issue the
2335 requested seizure order:

2336 (i) immediately, ex parte, and without notice or hearing;

2337 (ii) that directs the commissioner to take possession and control of:

2338 (A) all or a part of the property, accounts, and records of an insurer; and

2339 (B) the premises occupied by the insurer for transaction of the insurer's business; and

2340 (iii) that until further order of the receivership court, enjoins the insurer and its officers,
2341 managers, agents, and employees from disposition of its property and from the transaction of
2342 its business except with the written consent of the commissioner.

2343 (b) A person having possession or control of and refusing to deliver any of the records
2344 or assets of a person against whom a seizure order is issued under this Subsection (2) is guilty
2345 of a class B misdemeanor.

2346 (3) (a) A petition that requests injunctive relief:

2347 (i) shall be verified by the commissioner or the commissioner's designee; and

2348 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

2349 (b) The commissioner shall provide only the notice that the receivership court may
2350 require.

2351 (4) (a) The receivership court shall specify in the seizure order the duration of the
2352 seizure, which shall be the time the receivership court considers necessary for the
2353 commissioner to ascertain the condition of the insurer.

2354 (b) The receivership court may from time to time:

2355 (i) hold a hearing that the receivership court considers desirable:

2356 (A) (I) on motion of the commissioner;

2357 (II) on motion of the insurer; or

2358 (III) on its own motion; and

2359 (B) after the notice the receivership court considers appropriate; and

2360 (ii) extend, shorten, or modify the terms of the seizure order.

2361 (c) The receivership court shall vacate the seizure order if the commissioner fails to
2362 commence a formal proceeding under this chapter after having had a reasonable opportunity to
2363 commence a formal proceeding under this chapter.

2364 (d) An order of the receivership court pursuant to a formal proceeding under this
2365 chapter vacates the seizure order.

2366 (5) Entry of a seizure order under this section does not constitute a breach or an
2367 anticipatory breach of a contract of the insurer.

2368 (6) (a) An insurer subject to an ex parte seizure order under this section may petition
2369 the receivership court at any time after the issuance of a seizure order for a hearing and review
2370 of the basis for the seizure order.

2371 (b) The receivership court shall hold the hearing and review requested under this
2372 Subsection (6) not more than 15 days after the day on which the request is received or as soon
2373 thereafter as the court may allow.

2374 (c) A hearing under this Subsection (6):

2375 (i) may be held privately in chambers; and

2376 (ii) shall be held privately in chambers if the insurer proceeded against requests that [it]
2377 the hearing be private.

2378 (7) (a) If, at any time after the issuance of a seizure order, it appears to the receivership
2379 court that a person whose interest is or will be substantially affected by the seizure order did
2380 not appear at the hearing and has not been served, the receivership court may order that notice
2381 be given to the person.

2382 (b) An order under this Subsection (7) that notice be given may not stay the effect of a
2383 seizure order previously issued by the receivership court.

2384 (8) Whenever the commissioner makes a seizure as provided in Subsection (2), on the
2385 demand of the commissioner, it shall be the duty of the sheriff of a county of this state, and of
2386 the police department of a municipality in the state to furnish the commissioner with necessary
2387 deputies or officers to assist the commissioner in making and enforcing the seizure order.

2388 (9) The commissioner may appoint a receiver under this section. The insurer shall pay
2389 the costs and expenses of the receiver appointed.

2390 Section 50. Section **31A-27a-206** is amended to read:

2391 **31A-27a-206. Confidentiality.**

2392 (1) (a) Except as provided in Subsection (1)(b), in a delinquency proceeding or a
2393 judicial review under Section **31A-27a-201**:

2394 (i) all records of the insurer, department files, court records and papers, and other
2395 documents, so far as they pertain to or are a part of the record of the proceedings, are
2396 confidential; and

2397 (ii) a clerk of the court shall hold a paper filed with the clerk in a confidential file as
2398 permitted by law.

2399 [~~(ii) a paper filed with the clerk of the Third District Court for Salt Lake County shall~~
2400 ~~be held by the clerk in a confidential file as permitted by law.]~~

2401 (b) The items listed in Subsection (1)(a) are subject to Subsection (1)(a):

2402 (i) except to the extent necessary to obtain compliance with an order entered in
2403 connection with the proceeding; and

2404 (ii) unless and until:

2405 (A) the [~~Third District Court for Salt Lake County~~] court, after hearing argument in
2406 chambers, orders otherwise;

2407 (B) the insurer requests that the matter be made public; or

2408 (C) the commissioner applies for an order under Section **31A-27a-207**.

2409 (2) (a) If the recipient agrees to maintain the confidentiality of the document, material,
2410 or other information, the commissioner or rehabilitator may share a document, materials, or
2411 other information in the possession, custody, or control of the department, pertaining to an
2412 insurer that is the subject of a delinquency proceeding under this chapter with:

- 2413 (i) another state, federal, and international regulatory agency;
- 2414 (ii) the National Association of Insurance Commissioners and its affiliates or
2415 subsidiaries;
- 2416 (iii) a state, federal, and international law enforcement authority;
- 2417 (iv) an auditor appointed by the receivership court in accordance with Section
2418 [31A-27a-805](#); or
- 2419 (v) a representative of an affected guaranty association.
- 2420 (b) If the domiciliary receiver believes that certain information is sensitive, the receiver
2421 may share that information subject to a continuation of the confidentiality obligations beyond
2422 the period allowed in Subsection (3).
- 2423 (c) This section does not limit the power of the commissioner to disclose information
2424 under other applicable law.
- 2425 (3) (a) A domiciliary receiver shall permit a commissioner or a guaranty association of
2426 another state to obtain a listing of policyholders and certificate holders residing in the
2427 requestor's state, including current addresses and summary policy information, if the
2428 commissioner or the guaranty association of another state agrees:
- 2429 (i) to maintain the confidentiality of the record; and
- 2430 (ii) that the record will be used only for regulatory or guaranty association purposes.
- 2431 (b) Access to a record under this Subsection (3) may be limited to normal business
2432 hours.
- 2433 (c) If the domiciliary receiver believes that certain information described in this
2434 Subsection (3) is sensitive and disclosure might cause a diminution in recovery, the receiver
2435 may apply for a protective order imposing additional restrictions on access.
- 2436 (4) (a) The confidentiality obligations imposed by this section shall end upon the entry
2437 of an order of liquidation against the insurer, unless:
- 2438 (i) otherwise agreed to by the parties; or
- 2439 (ii) pursuant to an order of the receivership court.
- 2440 (b) A continuation of confidentiality as provided in Subsection (2) does not apply to an
2441 insurer record necessary for a guaranty association to discharge its statutory responsibilities.
- 2442 (5) A waiver of an applicable privilege or claim of confidentiality does not occur as a
2443 result of a disclosure, or any sharing of documents, materials, or other information, made

2444 pursuant to this section.

2445 Section 51. Section **31A-27a-207** is amended to read:

2446 **31A-27a-207. Grounds for rehabilitation or liquidation.**

2447 (1) The commissioner may [~~file in the Third District Court for Salt Lake County a~~
2448 ~~petition~~] petition a court with jurisdiction under Title 78A, Judiciary and Judicial
2449 Administration, with respect to an insurer domiciled in this state or an unauthorized insurer for
2450 an order of rehabilitation or liquidation on any one or more of the following grounds:

2451 (a) the insurer is impaired;

2452 (b) the insurer is insolvent;

2453 (c) subject to Subsection (2), the insurer is about to become insolvent;

2454 (d) (i) the insurer neglects or refuses to comply with an order of the commissioner to
2455 make good within the time prescribed by law any deficiency;

2456 (ii) if a stock company, if its capital and minimum required surplus is impaired; or

2457 (iii) if a company other than a stock company, if its surplus is impaired;

2458 (e) the insurer, its parent company, its subsidiary, or its affiliate:

2459 (i) converts, wastes, or conceals property of the insurer; or

2460 (ii) otherwise improperly disposes of, dissipates, uses, releases, transfers, sells, assigns,
2461 hypothecates, or removes the property of the insurer;

2462 (f) the insurer is in such condition that the insurer could not meet the requirements for
2463 organization and authorization as required by law, except as to the amount of:

2464 (i) the original surplus required of a stock company under Sections [31A-5-211](#) and
2465 [31A-8-209](#); and

2466 (ii) the surplus required of a company other than a stock company in excess of the
2467 minimum surplus required to be maintained;

2468 (g) the insurer, its parent company, its subsidiary, or its affiliate:

2469 (i) conceals, removes, alters, destroys, or fails to establish and maintain records and
2470 other pertinent material adequate for the determination of the financial condition of the insurer
2471 by examination under Section [31A-2-203](#); or

2472 (ii) fails to properly administer claims or maintain claims records that are adequate for
2473 the determination of its outstanding claims liability;

2474 (h) at any time after the issuance of an order under Subsection [31A-2-201](#)(4), or at the

2475 time of instituting a proceeding under this chapter, it appears to the commissioner that upon
2476 good cause shown, it is not in the best interest of the policyholders, creditors, or the public to
2477 proceed with the conduct of the business of the insurer;

2478 (i) the insurer is in such condition that the further transaction of business would be
2479 hazardous financially, according to Subsection 31A-17-609(3) or otherwise, to its
2480 policyholders, creditors, or the public;

2481 (j) there is reasonable cause to believe that:

2482 (i) there has been:

2483 (A) embezzlement from the insurer;

2484 (B) wrongful sequestration or diversion of the insurer's property;

2485 (C) forgery or fraud affecting the insurer; or

2486 (D) other illegal conduct in, by, or with respect to the insurer; and

2487 (ii) the act described in Subsection (1)(j)(i) if established would endanger assets in an
2488 amount threatening the solvency of the insurer;

2489 (k) control of the insurer is in a person who is:

2490 (i) dishonest;

2491 (ii) untrustworthy; or

2492 (iii) so lacking in insurance company managerial experience or capability as to be
2493 hazardous to policyholders, creditors, or the public;

2494 (l) if:

2495 (i) a person who in fact has executive authority in the insurer, whether an officer,
2496 manager, general agent, director, trustee, employee, shareholder, or other person:

2497 (A) refuses to be examined under oath by the commissioner concerning the insurer's
2498 affairs, whether in this state or elsewhere; or

2499 (B) if examined under oath, refuses to divulge pertinent information reasonably known
2500 to the person; and

2501 (ii) after reasonable notice of the facts described in Subsection (1)(l)(i), the insurer fails
2502 promptly and effectively to terminate:

2503 (A) the employment or status of the person; and

2504 (B) all of the person's influence on management;

2505 (m) after demand by the commissioner under Section 31A-2-203 or under this chapter,

2506 the insurer fails to promptly make available for examination:

2507 (i) any of its own property, accounts, or records; or

2508 (ii) so far as it pertains to the insurer, property, accounts, or records of:

2509 (A) a subsidiary or related company within the control of the insurer; or

2510 (B) a person having executive authority in the insurer;

2511 (n) without first obtaining the written consent of the commissioner, the insurer:

2512 (i) transfers, or attempts to transfer, in a manner contrary to Section 31A-5-508 or

2513 31A-16-103, substantially its entire property or business; or

2514 (ii) enters into a transaction the effect of which is to merge, consolidate, or reinsure

2515 substantially its entire property or business in or with the property or business of any other

2516 person;

2517 (o) the insurer or its property has been or is the subject of an application for the

2518 appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of

2519 the insurer or its property otherwise than as authorized under the insurance laws of this state;

2520 (p) within the previous five years the insurer willfully and continuously violates:

2521 (i) its charter or articles of incorporation;

2522 (ii) its bylaws;

2523 (iii) an insurance law of this state; or

2524 (iv) a valid order of the commissioner;

2525 (q) the insurer fails to pay within 60 days after the due date:

2526 (i) (A) an obligation to any state or any subdivision of a state; or

2527 (B) a judgment entered in any state, if the court in which the judgment is entered has

2528 jurisdiction over the subject matter; and

2529 (ii) except that nonpayment is not a ground until 60 days after a good faith effort by the

2530 insurer to contest the obligation has been terminated, whether it is before the commissioner or

2531 in the courts;

2532 (r) the insurer systematically:

2533 (i) engages in the practice of:

2534 (A) reaching settlements with and obtaining releases from claimants; and

2535 (B) unreasonably delaying payment, or failing to pay the agreed-upon settlements; or

2536 (ii) attempts to compromise with claimants or other creditors on the ground that it is

2537 financially unable to pay its claims or obligations in full;

2538 (s) the insurer fails to file its annual report or other financial report required by statute
2539 within the time allowed by law;

2540 (t) the board of directors or the holders of a majority of the shares entitled to vote, or a
2541 majority of those individuals entitled to the control of those entities specified in Section
2542 31A-27a-104, request or consent to rehabilitation or liquidation under this chapter;

2543 (u) (i) the insurer does not comply with its domiciliary state's requirements for issuance
2544 to it of a certificate of authority; or

2545 (ii) the insurer's certificate of authority is revoked by its state of domicile; or

2546 (v) when authorized by Chapter 17, Part 6, Risk-Based Capital.

2547 (2) For purposes of this section, an insurer is about to become insolvent if it is
2548 reasonably anticipated that the insurer will not have liquid assets to meet its current obligations
2549 for the next 90 days.

2550 Section 52. Section 31A-27a-209 is amended to read:

2551 **31A-27a-209. Effect of order of rehabilitation or liquidation.**

2552 (1) The filing or recording of an order of receivership with the following imparts the
2553 same notice as a deed, bill of sale, or other evidence of title filed or recorded would have
2554 imparted:

2555 (a) the [~~Third District Court for Salt Lake County~~] court;

2556 (b) the recorder of deeds of the county in which the principal business of the insurer is
2557 conducted; or

2558 (c) in the case of real estate, with the recorder of deeds of the county where the
2559 property is located.

2560 (2) The filing of a petition commencing delinquency proceedings under this chapter or
2561 the entry of an order of seizure, rehabilitation, or liquidation does not constitute a breach or an
2562 anticipatory breach of any contract or lease of the insurer.

2563 (3) (a) The receiver may appoint one or more special deputies.

2564 (b) A special deputy:

2565 (i) has the powers and responsibilities of the receiver granted under this section, unless
2566 specifically limited by the receiver; and

2567 (ii) serves at the pleasure of the receiver.

- 2568 (c) The receiver may employ or contract with:
- 2569 (i) legal counsel;
- 2570 (ii) one or more actuaries;
- 2571 (iii) one or more accountants;
- 2572 (iv) one or more appraisers;
- 2573 (v) one or more consultants;
- 2574 (vi) one or more clerks;
- 2575 (vii) one or more assistants; and
- 2576 (viii) other personnel as may be considered necessary.
- 2577 (d) A special deputy or other person with whom the receiver contracts under this
- 2578 Subsection (3):
- 2579 (i) is considered to be an agent of the commissioner only in the commissioner's
- 2580 capacity as receiver; and
- 2581 (ii) is not considered an agent of the state.
- 2582 (e) The provisions of any law governing the procurement of goods and services by the
- 2583 state do not apply to a contract entered into by the commissioner as receiver.
- 2584 (f) The compensation of a special deputy, employee, or contractor and all expenses of
- 2585 taking possession of the insurer and of conducting the receivership shall be:
- 2586 (i) determined by the receiver, with the approval of the receivership court in
- 2587 accordance with Section [31A-27a-115](#); and
- 2588 (ii) paid out of the property of the insurer.
- 2589 (g) (i) If the receiver, in the receiver's sole discretion, considers it necessary to the
- 2590 proper performance of the receiver's duties under this chapter, the receiver may appoint an
- 2591 advisory committee of policyholders, claimants, or other creditors including guaranty
- 2592 associations.
- 2593 (ii) The committee described in this Subsection (3)(g) serves:
- 2594 (A) at the pleasure of the receiver; and
- 2595 (B) without compensation and without reimbursement for expenses.
- 2596 (iii) The receiver or the receivership court in proceedings conducted under this chapter
- 2597 may not appoint any other committee of any nature.
- 2598 Section 53. Section **31A-44-501** is amended to read:

2599 **31A-44-501. Application for court order for rehabilitation or liquidation.**

2600 (1) The department may request that the attorney general petition [~~a district court in the~~
2601 ~~state~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, or a
2602 federal bankruptcy court that has exercised jurisdiction over a provider's facility, for an order
2603 that appoints a trustee to rehabilitate or liquidate the facility if:

2604 (a) the department determines that:

2605 (i) the provider is financially unsound or is unable to meet the income or available cash
2606 projections described in the provider's disclosure statement; and

2607 (ii) the provider's ability to fully perform the provider's obligations under a continuing
2608 care contract is endangered; or

2609 (b) the provider is bankrupt, insolvent, or has filed for protection from creditors under
2610 a federal or state reorganization, bankruptcy, or insolvency law.

2611 (2) A court that evaluates a petition filed under Subsection (1) regarding a provider:

2612 (a) shall evaluate the best interests of a person that has contracted with the provider;

2613 and

2614 (b) may require the proceeds of a lien imposed under Section [31A-44-601](#) to be used to
2615 pay an entrance fee to another facility on behalf of a resident of the provider's facility.

2616 Section 54. Section **35A-4-308** is amended to read:

2617 **35A-4-308. Bonds to ensure compliance.**

2618 (1) (a) The division, whenever [~~it~~] the division considers it necessary to ensure
2619 compliance with this chapter, may require any employer, subject to the contribution imposed
2620 hereunder, to deposit with [~~it~~] the division any bond or security as the division shall determine.

2621 (b) The bond or security may be sold by the division at public sale, if it becomes
2622 necessary, in order to recover any tax, interest, or penalty due.

2623 (c) Notice of the sale may be served upon the employer who deposited the securities
2624 personally or by mail. If by mail, notice sent to the last-known address as the same appears in
2625 the records of the division is sufficient for purposes of this requirement.

2626 (d) Upon the sale, the surplus, if any, above the amounts due, shall be returned to the
2627 employer who deposited the security.

2628 (2) (a) If an employer fails to comply with Subsection (1), [~~the district court of the~~
2629 ~~county in which the employer resides or in which the employer employs workers~~] a court shall,

2630 upon the commencement of a suit by the division for that purpose, enjoin the employer from
2631 further employing workers in this state or continuing in business until the employer has
2632 complied with Subsection (1).

2633 (b) Upon filing of a suit for such purpose by the division, the court shall set a date for
2634 hearing and cause notice to be served upon the employer. The hearing shall be not less than
2635 five nor more than 15 days from the service of the notice.

2636 Section 55. Section **35A-4-314** is amended to read:

2637 **35A-4-314. Disclosure of information for debt collection -- Court order --**

2638 **Procedures -- Use of information restrictions -- Penalties.**

2639 (1) The division shall disclose to a creditor who has obtained judgment against a debtor
2640 the name and address of the last known employer of the debtor if:

2641 (a) the judgment creditor obtains a court order requiring disclosure of the information
2642 as described in Subsection (2); and

2643 (b) the judgment creditor completes the requirements described in Subsection (3),
2644 including entering into a written agreement with the division.

2645 (2) (a) A court shall grant an order to disclose the information described in Subsection
2646 (1) if, under the applicable Utah Rules of Civil Procedure:

2647 (i) the judgment creditor files a motion with the court, which includes a copy of the
2648 judgment, and serves a copy of the motion to the judgment debtor and the division;

2649 (ii) the judgment debtor and the division have the opportunity to respond to the motion;
2650 and

2651 (iii) the court denies or overrules any objection to disclosure in the judgment debtor's
2652 and the division's response.

2653 (b) A court may not grant an order to disclose the information described in Subsection
2654 (1), if the court finds that the division has established that disclosure will have a negative effect
2655 on:

2656 (i) the willingness of employers to report wage and employment information; or

2657 (ii) the willingness of individuals to file claims for unemployment benefits.

2658 (c) The requirements of Subsection **63G-2-202(7)** and Section **63G-2-207** do not apply
2659 to information sought through a court order as described in this section.

2660 (3) If a court order is granted in accordance with this section, a judgment creditor shall:

- 2661 (a) provide to the division a copy of the order requiring the disclosure;
- 2662 (b) enter into a written agreement with the division, in a form approved by the division;
- 2663 (c) pay the division a reasonable fee that reflects the cost for processing the request as
- 2664 established by department rule; and
- 2665 (d) comply with the data safeguard and security measures described in 20 C.F.R. Sec.
- 2666 603.9 with respect to information received from the division under this section.
- 2667 (4) If a judgment creditor complies with Subsection (3), the division shall provide the
- 2668 information to the judgment creditor within 14 business days after the day on which the
- 2669 creditor complies with Subsection (3).
- 2670 (5) A judgment creditor may not:
- 2671 (a) use the information obtained under this section for a purpose other than satisfying
- 2672 the judgment between the creditor and debtor; or
- 2673 (b) disclose or share the information with any other person.
- 2674 (6) The division may audit a judgment creditor or other party receiving information
- 2675 under this section for compliance with the data safeguard and security measures described in 20
- 2676 C.F.R. Sec. 603.9.
- 2677 (7) If a judgment creditor or other party fails to comply with the data safeguard and
- 2678 security measures under 20 C.F.R. Sec. 603.9, the judgment creditor or other party is subject to
- 2679 a civil penalty of no more than \$10,000 enforceable by the Utah Office of the Attorney General
- 2680 as follows:
- 2681 (a) the attorney general, on the attorney general's own behalf or on behalf of the
- 2682 division, [~~may file an action in district court~~] may bring an action in a court with jurisdiction
- 2683 under Title 78A, Judiciary and Judicial Administration, to enforce the civil penalty; and
- 2684 (b) if the attorney general prevails in enforcing the civil penalty against the judgment
- 2685 creditor or other party:
- 2686 (i) the attorney general is entitled to an award for reasonable attorney fees, court costs,
- 2687 and investigative expenses; and
- 2688 (ii) the civil penalty shall be deposited into the special administrative expense account
- 2689 described in Subsection [35A-4-506\(1\)](#).
- 2690 Section 56. Section **48-1d-111** is amended to read:
- 2691 **48-1d-111. Signing and filing pursuant to judicial order.**

2692 (1) If a person required by this chapter to sign a record or deliver a record to the
2693 division for filing under this chapter does not do so, any other person that is aggrieved may
2694 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2695 Administration, to order:

- 2696 (a) the person to sign the record;
2697 (b) the person to deliver the record to the division for filing; or
2698 (c) the division to file the record unsigned.

2699 (2) If a petitioner under Subsection (1) is not the partnership or foreign limited liability
2700 partnership to which the record pertains, the petitioner shall make the partnership or foreign
2701 limited liability partnership a party to the action.

2702 (3) A record filed under Subsection (1)(c) is effective without being signed.

2703 Section 57. Section **48-1d-116** is amended to read:

2704 **48-1d-116. Duty of division to file -- Review of refusal to file -- Transmission of**
2705 **information by division.**

2706 (1) The division shall file a record delivered to the division for filing which satisfies
2707 this chapter. The duty of the division under this section is ministerial.

2708 (2) When the division files a record, the division shall record it as filed on the date and
2709 at the time of its delivery. After filing a record, the division shall deliver to the person that
2710 submitted the record a copy of the record with an acknowledgment of the date and time of
2711 filing and, in the case of a statement of denial, also to the partnership to which the statement
2712 pertains.

2713 (3) If the division refuses to file a record, the division, not later than 15 business days
2714 after the record is delivered, shall:

- 2715 (a) return the record or notify the person that submitted the record of the refusal; and
2716 (b) provide a brief explanation in a record of the reason for the refusal.

2717 (4) (a) If the division refuses to file a record, the person that submitted the record may
2718 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2719 Administration, to compel filing of the record.

2720 (b) The record and the explanation of the division of the refusal to file must be attached
2721 to the petition.

2722 (c) The court may decide the matter in a summary proceeding.

2723 (5) The filing of or refusal to file a record does not create a presumption that the
2724 information contained in the record is correct or incorrect.

2725 (6) Except as otherwise provided by Section 16-17-301 or by law other than this
2726 chapter, the division may deliver any record to a person by delivering it:

2727 (a) in person to the person that submitted it;

2728 (b) to the address of the person's registered agent;

2729 (c) to the principal office of the person; or

2730 (d) to another address the person provides to the division for delivery.

2731 Section 58. Section 48-1d-901 is amended to read:

2732 **48-1d-901. Events causing dissolution.**

2733 A partnership is dissolved, and [its] the partnership's activities and affairs must be
2734 wound up, upon the occurrence of any of the following:

2735 (1) in a partnership at will, the partnership has notice of a person's express will to
2736 withdraw as a partner, other than a partner that has dissociated under Subsections 48-1d-701(2)
2737 through (10), but, if the person specifies a withdrawal date later than the date the partnership
2738 had notice, on the later date;

2739 (2) in a partnership for a definite term or particular undertaking:

2740 (a) within 90 days after a person's dissociation by death or otherwise under Subsections
2741 48-1d-701(6) through (10) or wrongful dissociation under Subsection 48-1d-702(2), the
2742 affirmative vote or consent of at least half of the remaining partners to wind up the
2743 partnership's activities and affairs, for which purpose a person's rightful dissociation pursuant
2744 to Subsection 48-1d-702(2)(b)(i) constitutes the expression of that partner's consent to wind up
2745 the partnership's activities and affairs;

2746 (b) the express consent of all the partners to wind up the partnership's activities and
2747 affairs; or

2748 (c) the expiration of the term or the completion of the undertaking;

2749 (3) an event or circumstance that the partnership agreement states causes dissolution;

2750 (4) [~~on application~~] upon a petition brought by a partner, the entry [~~by the district court~~
2751 ~~of an order~~] of a court order dissolving the partnership on the ground that:

2752 (a) the conduct of all or substantially all the partnership's activities and affairs is
2753 unlawful;

2754 (b) the economic purpose of the partnership is likely to be unreasonably frustrated;

2755 (c) another partner has engaged in conduct relating to the partnership's activities and
2756 affairs which makes it not reasonably practicable to carry on the business in partnership with
2757 that partner; or

2758 (d) it is not otherwise reasonably practicable to carry on the partnership's activities and
2759 affairs in conformity with the partnership agreement;

2760 (5) ~~[on application]~~ upon a petition brought by a transferee, the entry ~~[by the district~~
2761 ~~court of an order]~~ of a court order dissolving the partnership on the ground that it is equitable to
2762 wind up the partnership's activities and affairs:

2763 (a) after the expiration of the term or completion of the undertaking, if the partnership
2764 was for a definite term or particular undertaking at the time of the transfer or entry of the
2765 charging order that gave rise to the transfer; or

2766 (b) at any time, if the partnership was a partnership at will at the time of the transfer or
2767 entry of the charging order that gave rise to the transfer; or

2768 (6) the passage of 90 consecutive days during which the partnership does not have at
2769 least two partners.

2770 Section 59. Section **48-1d-902** is amended to read:

2771 **48-1d-902. Winding up.**

2772 (1) (a) A dissolved partnership shall wind up ~~[its]~~ the partnership's activities and affairs
2773 ~~[and, except].~~

2774 (b) Except as otherwise provided in Section **48-1d-903**, ~~[the partnership]~~ a partnership
2775 only continues after dissolution ~~[only]~~ for the purpose of winding up.

2776 (2) In winding up ~~[its]~~ a partnership's activities and affairs, the partnership:

2777 (a) shall discharge the partnership's debts, obligations, and other liabilities, settle and
2778 close the partnership's activities and affairs, and marshal and distribute the assets of the
2779 partnership; and

2780 (b) may:

2781 (i) deliver to the division for filing a statement of dissolution stating the name of the
2782 partnership and that the partnership is dissolved;

2783 (ii) preserve the partnership's activities and affairs and property as a going concern for
2784 a reasonable time;

- 2785 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or
2786 administrative;
- 2787 (iv) transfer the partnership's property;
- 2788 (v) settle disputes by mediation or arbitration;
- 2789 (vi) deliver to the division for filing a statement of termination stating the name of the
2790 partnership and that the partnership is terminated; and
- 2791 (vii) perform other acts necessary or appropriate to the winding up.

2792 (3) A person whose dissociation as a partner resulted in dissolution may participate in
2793 winding up as if still a partner, unless the dissociation was wrongful.

2794 (4) If a dissolved partnership does not have a partner and no person has the right to
2795 participate in winding up under Subsection (3), the personal or legal representative of the last
2796 person to have been a partner may wind up the partnership's activities and affairs. If the
2797 representative does not exercise that right, a person to wind up the partnership's activities and
2798 affairs may be appointed by the consent of transferees owning a majority of the rights to
2799 receive distributions at the time the consent is to be effective. A person appointed under this
2800 Subsection (4) has the powers of a partner under Section 48-1d-904 but is not liable for the
2801 debts, obligations, and other liabilities of the partnership solely by reason of having or
2802 exercising those powers or otherwise acting to wind up the partnership's activities and affairs.

2803 (5) ~~[On the application of]~~ Upon a petition brought by any partner or person entitled
2804 under Subsection (3) to participate in winding up, ~~[the district]~~ a court may order judicial
2805 supervision of the winding up of a dissolved partnership, including the appointment of a person
2806 to wind up the partnership's activities and affairs, if:

2807 (a) the partnership does not have a partner, and within a reasonable time following the
2808 dissolution no person has been appointed under Subsection (4); or

2809 (b) the applicant establishes other good cause.

2810 Section 60. Section 48-1d-903 is amended to read:

2811 **48-1d-903. Rescinding dissolution.**

2812 (1) A partnership may rescind ~~[its]~~ the partnership's dissolution, unless a statement of
2813 termination applicable to the partnership is effective or ~~[the district]~~ the court has entered an
2814 order under Subsection 48-1d-901(4) or (5) dissolving the partnership.

2815 (2) Rescinding dissolution under this section requires:

2816 (a) the affirmative vote or consent of each partner;

2817 (b) if a statement of dissolution applicable to the partnership has been filed by the
2818 division but has not become effective, delivery to the division for filing of a statement of
2819 withdrawal under Section 48-1d-114 applicable to the statement of dissolution; and

2820 (c) if a statement of dissolution applicable to the partnership is effective, the delivery to
2821 the division for filing of a statement of correction under Section 48-1d-115 stating that
2822 dissolution has been rescinded under this section.

2823 (3) If a partnership rescinds [its] the partnership's dissolution:

2824 (a) the partnership resumes carrying on its activities and affairs as if dissolution had
2825 never occurred;

2826 (b) subject to Subsection (3)(c), any liability incurred by the partnership after the
2827 dissolution and before the rescission is effective is determined as if dissolution had never
2828 occurred; and

2829 (c) the rights of a third party arising out of conduct in reliance on the dissolution before
2830 the third party knew or had notice of the rescission may not be adversely affected.

2831 Section 61. Section 48-1d-909 is amended to read:

2832 **48-1d-909. Court proceedings.**

2833 (1) (a) A dissolved limited liability partnership that has published a notice under
2834 Section 48-1d-908 may [~~file an application with the district court in the county where the~~
2835 ~~dissolved limited liability partnership's principal office is located or, if the principal office is~~
2836 ~~not located in this state, where the office of its registered agent is located,] petition a court with
2837 jurisdiction under Title 78A, Judiciary and Judicial Administration, for a determination of the
2838 amount and form of security to be provided for payment of claims that are contingent, have not
2839 been made known to the dissolved limited liability partnership, or are based on an event
2840 occurring after the effective date of dissolution but which, based on the facts known to the
2841 dissolved limited liability partnership, are reasonably expected to arise after the effective date
2842 of dissolution.~~

2843 (b) Security is not required for any claim that is or is reasonably anticipated to be
2844 barred under Subsection 48-1d-907(3).

2845 (2) [~~Not~~] No later than 10 days after the filing of an application under Subsection (1),
2846 the dissolved limited liability partnership shall give notice of the proceeding to each claimant

2847 holding a contingent claim known to the dissolved limited liability partnership.

2848 (3) (a) In any proceeding under this section, the [district] court may appoint a guardian
2849 ad litem to represent all claimants whose identities are unknown.

2850 (b) The reasonable fees and expenses of the guardian, including all reasonable expert
2851 witness fees, must be paid by the dissolved limited liability partnership.

2852 (4) A dissolved limited liability partnership that provides security in the amount and
2853 form ordered by the [district] court under Subsection (1) satisfies the dissolved limited liability
2854 partnership's obligations with respect to claims that are contingent, have not been made known
2855 to the dissolved limited liability partnership, or are based on an event occurring after the
2856 effective date of dissolution, and the claims may not be enforced against a partner or transferee
2857 who receives assets in liquidation.

2858 (5) This section applies only to a debt, obligation, or other liability incurred while a
2859 partnership was a limited liability partnership.

2860 Section 62. Section **48-1d-1003** is amended to read:

2861 **48-1d-1003. Required notice or approval.**

2862 (1) A domestic or foreign entity that is required to give notice to, or obtain the approval
2863 of, a governmental agency or officer of this state to be a party to a merger must give the notice
2864 or obtain the approval to be a party to an interest exchange, conversion, or domestication.

2865 (2) Property held for a charitable purpose under the law of this state by a domestic or
2866 foreign entity immediately before a transaction under this part becomes effective may not, as a
2867 result of the transaction, be diverted from the objects for which it was donated, granted,
2868 devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this
2869 state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity
2870 obtains [~~an appropriate order of the district court~~] a court order specifying the disposition of the
2871 property.

2872 (3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
2873 donation, subscription, or conveyance that is made to a merging entity that is not the surviving
2874 entity and that takes effect or remains payable after the merger inures to the surviving entity. A
2875 trust obligation that would govern property if transferred to the nonsurviving entity applies to
2876 property that is transferred to the surviving entity under this section.

2877 Section 63. Section **48-1d-1310** is amended to read:

2878 **48-1d-1310. Purchase of interest upon death, incapacity, or disqualification of**
2879 **member.**

2880 (1) Subject to this part, one or more of the following may provide for the purchase of a
2881 partner's interest in a professional services partnership upon the death, incapacity, or
2882 disqualification of the partner:

2883 (a) the partnership agreement; or

2884 (b) a private agreement.

2885 (2) In the absence of a provision described in Subsection (1), a professional services
2886 partnership shall purchase the interest of a partner who is deceased, incapacitated, or no longer
2887 qualified to own an interest in the professional services partnership within 90 days after the day
2888 on which the professional services partnership is notified of the death, incapacity, or
2889 disqualification.

2890 (3) If a professional services partnership purchases a partner's interest under Subsection
2891 (2), the professional services company shall purchase the interest at a price that is the
2892 reasonable fair market value as of the date of death, incapacity, or disqualification.

2893 (4) If a professional services partnership fails to purchase a partner's interest as
2894 required by Subsection (2) at the end of the 90-day period described in Subsection (2), ~~one of~~
2895 ~~the following may bring an action in the district court of the county in which the principal~~
2896 ~~office or place of practice of the professional services partnership is located] the following~~
2897 persons may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial
2898 Administration, to enforce Subsection (2):

2899 (a) the personal representative of a deceased partner;

2900 (b) the guardian or conservator of an incapacitated partner; or

2901 (c) the disqualified partner.

2902 (5) A court in which an action is brought under Subsection (4) may:

2903 (a) award the person bringing the action the reasonable fair market value of the
2904 interest; or

2905 (b) within [its] the court's jurisdiction, order the liquidation of the professional services
2906 partnership.

2907 (6) If a person described in Subsections (4)(a) through (c) is successful in an action
2908 under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

2909 Section 64. Section **48-2e-204** is amended to read:

2910 **48-2e-204. Signing and filing pursuant to judicial order.**

2911 (1) If a person required by this chapter to sign a record or deliver a record to the
2912 division for filing under this chapter does not do so, any other person that is aggrieved may
2913 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2914 Administration, to order:

2915 (a) the person to sign the record;

2916 (b) the person to deliver the record to the division for filing; or

2917 (c) the division to file the record unsigned.

2918 (2) If the petitioner under Subsection (1) is not the limited partnership or foreign
2919 limited partnership to which the record pertains, the petitioner shall make the limited
2920 partnership or foreign limited partnership a party to the action.

2921 (3) A record filed under Subsection (1)(c) is effective without being signed.

2922 Section 65. Section **48-2e-209** is amended to read:

2923 **48-2e-209. Duty of division to file -- Review of refusal to file -- Transmission of**
2924 **information by the division.**

2925 (1) The division shall file a record delivered to the division for filing which satisfies
2926 this chapter. The duty of the division under this section is ministerial.

2927 (2) When the division files a record, the division shall record it as filed on the date and
2928 at the time of its delivery. After filing a record, the division shall deliver to the person that
2929 submitted the record a copy of the record with an acknowledgment of the date and time of
2930 filing.

2931 (3) If the division refuses to file a record, the division, not later than 15 business days
2932 after the record is delivered, shall:

2933 (a) return the record or notify the person that submitted the record of the refusal; and

2934 (b) provide a brief explanation in a record of the reason for the refusal.

2935 (4) (a) If the division refuses to file a record, the person that submitted the record may
2936 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2937 Administration, to compel filing of the record.

2938 (b) The record and the explanation of the division of the refusal to file must be attached
2939 to the petition.

2940 (c) The court may decide the matter in a summary proceeding.

2941 (5) The filing of or refusal to file a record does not create a presumption that the
2942 information contained in the filing is correct or incorrect.

2943 (6) Except as otherwise provided by Section 16-17-301 or by law other than this
2944 chapter, the division may deliver any record to a person by delivering it:

2945 (a) in person to the person that submitted it;

2946 (b) to the address of the person's registered agent;

2947 (c) to the principal office of the person; or

2948 (d) to another address the person provides to the division for delivery.

2949 Section 66. Section 48-2e-801 is amended to read:

2950 **48-2e-801. Events causing dissolution.**

2951 (1) A limited partnership is dissolved, and [its] the limited partnership's activities and
2952 affairs must be wound up, upon the occurrence of any of the following:

2953 (a) an event or circumstance that the partnership agreement states causes dissolution;

2954 (b) the affirmative vote or consent of all general partners and of limited partners

2955 owning a majority of the rights to receive distributions as limited partners at the time the vote
2956 or consent is to be effective;

2957 (c) after the dissociation of a person as a general partner:

2958 (i) if the limited partnership has at least one remaining general partner, the vote or

2959 consent to dissolve the limited partnership not later than 90 days after the dissociation by

2960 partners owning a majority of the rights to receive distributions as partners at the time the vote
2961 or consent is to be effective; or

2962 (ii) if the limited partnership does not have a remaining general partner, the passage of
2963 90 days after the dissociation, unless before the end of the period:

2964 (A) consent to continue the activities and affairs of the limited partnership and admit at
2965 least one general partner is given by limited partners owning a majority of the rights to receive
2966 distributions as limited partners at the time the consent is to be effective; and

2967 (B) at least one person is admitted as a general partner in accordance with the consent;

2968 (d) the passage of 90 consecutive days after the dissociation of the limited partnership's
2969 last limited partner, unless before the end of the period the limited partnership admits at least
2970 one limited partner;

2971 (e) the passage of 90 consecutive days during which the limited partnership has only
2972 one partner, unless before the end of the period:

2973 (i) the limited partnership admits at least one person as a partner;

2974 (ii) if the previously sole remaining partner is only a general partner, the limited
2975 partnership admits the person as a limited partner; and

2976 (iii) if the previously sole remaining partner is only a limited partner, the limited
2977 partnership admits a person as a general partner;

2978 (f) ~~[on application]~~ upon a petition brought by a partner, the entry ~~[by the district court~~
2979 ~~of an order]~~ of a court order dissolving the limited partnership on the grounds that:

2980 (i) the conduct of all or substantially all the limited partnership's activities and affairs is
2981 unlawful; or

2982 (ii) it is not reasonably practicable to carry on the limited partnership's activities and
2983 affairs in conformity with the partnership agreement; or

2984 (g) the signing and filing of a statement of administrative dissolution by the division
2985 under Section [48-2e-810](#).

2986 (2) If an event occurs that imposes a deadline on a limited partnership under
2987 Subsection (1) and before the limited partnership has met the requirements of the deadline,
2988 another event occurs that imposes a different deadline on the limited partnership under
2989 Subsection (1):

2990 (a) the occurrence of the second event does not affect the deadline caused by the first
2991 event; and

2992 (b) the limited partnership's meeting of the requirements of the first deadline does not
2993 extend the second deadline.

2994 Section 67. Section **48-2e-802** is amended to read:

2995 **48-2e-802. Winding up.**

2996 (1) (a) A dissolved limited partnership shall wind up ~~[its]~~ the limited partnership's
2997 activities and affairs~~[, and, except]~~.

2998 (b) Except as otherwise provided in Section [48-2e-803](#), the limited partnership only
2999 continues after dissolution ~~[only]~~ for the purpose of winding up.

3000 (2) In winding up ~~[its]~~ the limited partnership's activities and affairs, the limited
3001 partnership:

3002 (a) shall discharge the limited partnership's debts, obligations, and other liabilities,
3003 settle and close the limited partnership's activities and affairs, and marshal and distribute the
3004 assets of the limited partnership; and

3005 (b) may:

3006 (i) amend its certificate of limited partnership to state that the limited partnership is
3007 dissolved;

3008 (ii) preserve the limited partnership activities, affairs, and property as a going concern
3009 for a reasonable time;

3010 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or
3011 administrative;

3012 (iv) transfer the limited partnership's property;

3013 (v) settle disputes by mediation or arbitration;

3014 (vi) deliver to the division for filing a statement of termination stating the name of the
3015 limited partnership and that the limited partnership is terminated; and

3016 (vii) perform other acts necessary or appropriate to the winding up.

3017 (3) (a) If a dissolved limited partnership does not have a general partner, a person to
3018 wind up the dissolved limited partnership's activities and affairs may be appointed by the
3019 affirmative vote or consent of limited partners owning a majority of the rights to receive
3020 distributions as limited partners at the time the vote or consent is to be effective.

3021 (b) A person appointed under this Subsection (3):

3022 ~~[(a)]~~ (i) has the powers of a general partner under Section 48-2e-804 but is not liable
3023 for the debts, obligations, and other liabilities of the limited partnership solely by reason of
3024 having or exercising those powers or otherwise acting to wind up the dissolved limited
3025 partnership's activities and affairs; and

3026 ~~[(b)]~~ (ii) shall deliver promptly to the division for filing an amendment to the
3027 certificate of limited partnership stating:

3028 ~~[(i)]~~ (A) that the limited partnership does not have a general partner;

3029 ~~[(ii)]~~ (B) the name and street and mailing addresses of the person; and

3030 ~~[(iii)]~~ (C) that the person has been appointed pursuant to this subsection to wind up the
3031 limited partnership.

3032 ~~[(4) On the application of any]~~

3033 (4) Upon a petition brought by a partner, [the district] a court may order judicial
3034 supervision of the winding up of a dissolved limited partnership, including the appointment of
3035 a person to wind up the limited partnership's activities and affairs, if:

3036 (a) the limited partnership does not have a general partner and within a reasonable time
3037 following the dissolution no person has been appointed pursuant to Subsection (3); or
3038 (b) the applicant establishes other good cause.

3039 Section 68. Section **48-2e-803** is amended to read:

3040 **48-2e-803. Rescinding dissolution.**

3041 (1) A limited partnership may rescind [~~its~~] the limited partnership's dissolution, unless
3042 a statement of termination applicable to the limited partnership is effective, [~~the district~~] a court
3043 has entered an order under Subsection **48-2e-801**(1)(f) dissolving the limited partnership, or the
3044 division has dissolved the limited partnership under Section **48-2e-810**.

3045 (2) Rescinding dissolution under this section requires:

3046 (a) the affirmative vote or consent of each partner; and
3047 (b) if the limited partnership has delivered to the division for filing an amendment to
3048 the certificate of limited partnership stating that the partnership is dissolved and if:

3049 (i) the amendment is not effective, the filing by the limited partnership of a statement
3050 of withdrawal under Section **48-2e-207** applicable to the amendment; or

3051 (ii) the amendment is effective, the delivery by the limited partnership to the division
3052 for filing of an amendment to the certificate of limited partnership stating that the dissolution
3053 has been rescinded under this section.

3054 (3) If a limited partnership rescinds [~~its~~] the limited partnership's dissolution:

3055 (a) the limited partnership resumes carrying on [~~its~~] the limited partnership's activities
3056 and affairs as if dissolution had never occurred;

3057 (b) subject to Subsection (3)(c), any liability incurred by the limited partnership after
3058 the dissolution and before the rescission is effective is determined as if dissolution had never
3059 occurred; and

3060 (c) the rights of a third party arising out of conduct in reliance on the dissolution before
3061 the third party knew or had notice of the rescission may not be adversely affected.

3062 Section 69. Section **48-2e-808** is amended to read:

3063 **48-2e-808. Court proceedings.**

3064 (1) (a) A dissolved limited partnership that has published a notice under Section
3065 ~~48-2e-807~~ may [~~file an application with the district court in the county where the dissolved~~
3066 ~~limited partnership's principal office is located, or, if the principal office is not located in this~~
3067 ~~state, where the office of its registered agent is located,]~~ petition a court with jurisdiction under
3068 Title 78A, Judiciary and Judicial Administration, for a determination of the amount and form
3069 of security to be provided for payment of claims that are contingent, have not been made
3070 known to the dissolved limited partnership, or are based on an event occurring after the
3071 effective date of dissolution but which, based on the facts known to the dissolved limited
3072 partnership, are reasonably expected to arise after the effective date of dissolution.

3073 (b) Security is not required for any claim that is or is reasonably anticipated to be
3074 barred under Subsection ~~48-2e-807~~(3).

3075 (2) [~~Not~~] No later than 10 days after the filing of an application under Subsection (1),
3076 the dissolved limited partnership shall give notice of the proceeding to each claimant holding a
3077 contingent claim known to the dissolved limited partnership.

3078 (3) (a) In a proceeding brought under this section, the court may appoint a guardian ad
3079 litem to represent all claimants whose identities are unknown.

3080 (b) The reasonable fees and expenses of the guardian, including all reasonable expert
3081 witness fees, must be paid by the dissolved limited partnership.

3082 (4) A dissolved limited partnership that provides security in the amount and form
3083 ordered by the court under Subsection (1) satisfies the dissolved limited partnership's
3084 obligations with respect to claims that are contingent, have not been made known to the
3085 dissolved limited partnership, or are based on an event occurring after the effective date of
3086 dissolution, and such claims may not be enforced against a partner or transferee that received
3087 assets in liquidation.

3088 Section 70. Section ~~48-2e-1103~~ is amended to read:

3089 **~~48-2e-1103. Required notice or approval.~~**

3090 (1) A domestic or foreign entity that is required to give notice to, or obtain the approval
3091 of, a governmental agency or officer of this state to be a party to a merger must give the notice
3092 or obtain the approval to be a party to an interest exchange, conversion, or domestication.

3093 (2) Property held for a charitable purpose under the law of this state by a domestic or
3094 foreign entity immediately before a transaction under this part becomes effective may not, as a

3095 result of the transaction, be diverted from the objects for which it was donated, granted,
3096 devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this
3097 state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity
3098 obtains [~~an appropriate order of the district court~~] a court order specifying the disposition of the
3099 property.

3100 (3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
3101 donation, subscription, or conveyance that is made to a merging entity that is not the surviving
3102 entity and that takes effect or remains payable after the merger inures to the surviving entity. A
3103 trust obligation that would govern property if transferred to the nonsurviving entity applies to
3104 property that is transferred to the surviving entity under this section.

3105 Section 71. Section **48-3a-204** is amended to read:

3106 **48-3a-204. Signing and filing pursuant to judicial order.**

3107 (1) If a person required by this chapter to sign a record or deliver a record to the
3108 division for filing under this chapter does not do so, any other person that is aggrieved may
3109 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
3110 Administration, to order:

- 3111 (a) the person to sign the record;
3112 (b) the person to deliver the record to the division for filing; or
3113 (c) the division to file the record unsigned.

3114 (2) If a petitioner under Subsection (1) is not the limited liability company or foreign
3115 limited liability company to which the record pertains, the petitioner shall make the limited
3116 liability company or foreign limited liability company a party to the action.

3117 (3) A record filed under Subsection (1)(c) is effective without being signed.

3118 Section 72. Section **48-3a-209** is amended to read:

3119 **48-3a-209. Duty of division to file -- Review of refusal to file -- Transmission of**
3120 **information by division.**

3121 (1) The division shall file a record delivered to the division for filing which satisfies
3122 this chapter. The duty of the division under this section is ministerial.

3123 (2) When the division files a record, the division shall record it as filed on the date and
3124 at the time of its delivery. After filing a record, the division shall deliver to the person that
3125 submitted the record a copy of the record with an acknowledgment of the date and time of

3126 filing and, in the case of a statement of denial, also to the limited liability company to which
3127 the statement pertains.

3128 (3) If the division refuses to file a record, the division shall, not later than 15 business
3129 days after the record is delivered:

3130 (a) return the record or notify the person that submitted the record of the refusal; and

3131 (b) provide a brief explanation in a record of the reason for the refusal.

3132 (4) (a) If the division refuses to file a record, the person that submitted the record may
3133 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
3134 Administration, to compel filing of the record.

3135 (b) The record and the explanation of the division of the refusal to file must be attached
3136 to the petition.

3137 (c) The court may decide the matter in a summary proceeding.

3138 (5) The filing of or refusal to file a record does not create a presumption that the
3139 information contained in the record is correct or incorrect.

3140 (6) Except as otherwise provided by Section 16-17-301 or by law other than this
3141 chapter, the division may deliver any record to a person by delivering it:

3142 (a) in person to the person that submitted it;

3143 (b) to the address of the person's registered agent;

3144 (c) to the principal office of the person; or

3145 (d) to another address the person provides to the division for delivery.

3146 Section 73. Section 48-3a-701 is amended to read:

3147 **48-3a-701. Events causing dissolution.**

3148 A limited liability company is dissolved, and its activities and affairs must be wound
3149 up, upon the occurrence of any of the following:

3150 (1) an event or circumstance that the operating agreement states causes dissolution;

3151 (2) the consent of all the members;

3152 (3) the passage of 90 consecutive days during which the limited liability company has
3153 no members unless:

3154 (a) consent to admit at least one specified person as a member is given by transferees
3155 owning the rights to receive a majority of distributions as transferees at the time the consent is
3156 to be effective; and

- 3157 (b) at least one person becomes a member in accordance with the consent;
- 3158 (4) ~~[on application by]~~ upon a petition brought by a member, the entry ~~[by the district~~
3159 ~~court of an order]~~ of a court order dissolving the limited liability company on the grounds that:
- 3160 (a) the conduct of all or substantially all of the limited liability company's activities and
3161 affairs is unlawful; or
- 3162 (b) it is not reasonably practicable to carry on the limited liability company's activities
3163 and affairs in conformity with the certificate of organization and the operating agreement;
- 3164 (5) ~~[on application by]~~ upon a petition brought by a member, the entry ~~[by the district~~
3165 ~~court of an order]~~ of a court order dissolving the limited liability company on the grounds that
3166 the managers or those members in control of the limited liability company:
- 3167 (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
- 3168 (b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will
3169 be directly harmful to the applicant; or
- 3170 (6) the signing and filing of a statement of administrative dissolution by the division
3171 under Subsection 48-3a-708(3).

3172 Section 74. Section 48-3a-702 is amended to read:

3173 **48-3a-702. Election to purchase in lieu of dissolution.**

3174 (1) (a) In a proceeding under Subsection 48-3a-701(5) to dissolve a limited liability
3175 company, the limited liability company may elect or, if ~~[it]~~ the limited liability company fails to
3176 elect, one or more members may elect to purchase the interest in the limited liability company
3177 owned by the applicant member at the fair market value of the interest, determined as provided
3178 in this section.

3179 (b) An election pursuant to this Subsection (1) is irrevocable unless ~~[the district]~~ a
3180 court determines that it is equitable to set aside or modify the election.

3181 (2) (a) An election to purchase pursuant to this section may be filed with ~~[the district]~~ a
3182 court at any time within 90 days after the filing of the petition in a proceeding under Subsection
3183 48-3a-701(5) or at any later time as the ~~[district]~~ court in ~~[its]~~ the court's discretion may allow.

3184 (b) If the limited liability company files an election with ~~[the district]~~ a court within the
3185 90-day period, or at any later time allowed by the ~~[district]~~ court, to purchase the interest in the
3186 limited liability company owned by the applicant member, the limited liability company shall
3187 purchase the interest in the manner provided in this section.

3188 (3) (a) If the limited liability company does not file an election with [~~the district~~] a
3189 court within the time period, but an election to purchase the interest in the limited liability
3190 company owned by the applicant member is filed by one or more members within the time
3191 period, the limited liability company shall, within 10 days after the later of the end of the time
3192 period allowed for the filing of elections to purchase under this section or notification from the
3193 [~~district~~] court of an election by members to purchase the interest in the limited liability
3194 company owned by the applicant member as provided in this section, give written notice of the
3195 election to purchase to all members of the limited liability company, other than the applicant
3196 member.

3197 (b) The notice shall state the name and the percentage interest in the limited liability
3198 company owned by the applicant member and the name and the percentage interest in the
3199 limited liability company owned by each electing member.

3200 (c) The notice shall advise any recipients who have not participated in the election of
3201 their right to join in the election to purchase the interest in the limited liability company in
3202 accordance with this section and of the date by which any notice of intent to participate must be
3203 filed with the [~~district~~] court.

3204 (4) Members who wish to participate in the purchase of the interest in the limited
3205 liability company of the applicant member must file notice of their intention to join in the
3206 purchase by electing members no later than 30 days after the effective date of the limited
3207 liability company's notice of their right to join in the election to purchase.

3208 (5) All members who have filed with the [~~district~~] court an election or notice of their
3209 intention to participate in the election to purchase the interest in the limited liability company
3210 of the applicant member thereby become irrevocably obligated to participate in the purchase of
3211 the interest from the applicant member upon the terms and conditions of this section, unless the
3212 [~~district~~] court otherwise directs.

3213 (6) After an election has been filed by the limited liability company or one or more
3214 members, the proceedings under Subsection 48-3a-701(5) may not be discontinued or settled,
3215 nor may the applicant member sell or otherwise dispose of the applicant member's interest in
3216 the limited liability company, unless the [~~district~~] court determines that it would be equitable to
3217 the limited liability company and the members, other than the applicant member, to permit any
3218 discontinuance, settlement, sale, or other disposition.

3219 (7) If, within 60 days after the earlier of the limited liability company filing of an
3220 election to purchase the interest in the limited liability company of the applicant member or the
3221 limited liability company's mailing of a notice to its members of the filing of an election by the
3222 members to purchase the interest in the limited liability company of the applicant member, the
3223 applicant member and electing limited liability company or members reach agreement as to the
3224 fair market value and terms of the purchase of the applicant member's interest, the [district]
3225 court shall enter an order directing the purchase of the applicant member's interest, upon the
3226 terms and conditions agreed to by the parties.

3227 (8) If the parties are unable to reach an agreement as provided for in Subsection (7),
3228 upon application of any party, the [district] court shall stay the proceedings under Subsection
3229 48-3a-701(5) and determine the fair market value of the applicant member's interest in the
3230 limited liability company as of the day before the date on which the petition under Subsection
3231 48-3a-701(5) was filed or as of any other date the [district] court determines to be appropriate
3232 under the circumstances and based on the factors the [district] court determines to be
3233 appropriate.

3234 (9) (a) Upon determining the fair market value of the interest in the limited liability
3235 company of the applicant member, the [district] court shall enter an order directing the
3236 purchase of the interest in the limited liability company upon terms and conditions the [district]
3237 court determines to be appropriate.

3238 (b) The terms and conditions may include payment of the purchase price in
3239 installments, where necessary in the interest of equity, provision for security to assure payment
3240 of the purchase price and any additional costs, fees, and expenses awarded by the [district]
3241 court, and an allocation of the interest in the limited liability company among members if the
3242 interest in the limited liability company is to be purchased by members.

3243 (10) (a) In allocating the applicant member's interest in the limited liability company
3244 among holders of different classes of members, the [district] court shall attempt to preserve the
3245 existing distribution of voting rights among member classes to the extent practicable.

3246 (b) The [district] court may direct that holders of a specific class or classes may not
3247 participate in the purchase.

3248 (c) The [district] court may not require any electing member to purchase more of the
3249 interest in the limited liability company owned by the applicant member than the percentage

3250 interest that the purchasing member may have set forth in the purchasing member's election or
3251 notice of intent to participate filed with the [district] court.

3252 (11) (a) Interest may be allowed at the rate and from the date determined by the
3253 [district] court to be equitable.

3254 (b) However, if the [district] court finds that the refusal of the applicant member to
3255 accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be
3256 allowed.

3257 (12) If the [district] court finds that the applicant member had probable ground for
3258 relief under Subsection 48-3a-701(5), the [district] court may award to the applicant member
3259 reasonable fees and expenses of counsel and experts employed by the applicant member.

3260 (13) (a) Upon entry of an order under Subsection (7) or (9), the [district] court shall
3261 dismiss the petition to dissolve the limited liability company under Subsection 48-3a-701(5)
3262 and the applicant member shall no longer have any rights or status as a member of the limited
3263 liability company, except the right to receive the amounts awarded to the applicant member by
3264 the [district] court.

3265 (b) The award is enforceable in the same manner as any other judgment.

3266 (14) (a) The purchase ordered pursuant to Subsection (9) shall be made within 10 days
3267 after the date the order becomes final, unless before that time the limited liability company files
3268 with the [district] court a notice of [its] the limited liability company's intention to file a
3269 statement of dissolution.

3270 (b) The statement of dissolution must then be adopted and filed within 60 days after
3271 notice.

3272 (15) (a) Upon filing of a statement of dissolution, the limited liability company is
3273 dissolved and shall be wound up pursuant to Section 48-3a-703, and the order entered pursuant
3274 to Subsection (9) is no longer of any force or effect.

3275 (b) However, the [district] court may award the applicant member reasonable fees and
3276 expenses in accordance with Subsection (12).

3277 (c) The applicant member may continue to pursue any claims previously asserted on
3278 behalf of the limited liability company.

3279 (16) Any payment by the limited liability company pursuant to an order under
3280 Subsection (7) or (9), other than an award of fees and expenses pursuant to Subsection (12), is

3281 subject to the provisions of Sections 48-3a-405 and 48-3a-406.

3282 Section 75. Section 48-3a-703 is amended to read:

3283 **48-3a-703. Winding up.**

3284 (1) (a) A dissolved limited liability company shall wind up ~~[its]~~ the limited liability
3285 company's activities and affairs ~~[and, except]~~.

3286 (b) Except as otherwise provided in Section 48-3a-704, the limited liability company
3287 only continues after dissolution ~~[only]~~ for the purpose of winding up.

3288 (2) In winding up ~~[its]~~ the limited liability company's activities and affairs, a limited
3289 liability company:

3290 (a) shall discharge the limited liability company's debts, obligations, and other
3291 liabilities, settle and close the limited liability company's activities and affairs, and marshal and
3292 distribute the assets of the limited liability company; and

3293 (b) may:

3294 (i) deliver to the division for filing a statement of dissolution stating the name of the
3295 limited liability company and that the limited liability company is dissolved;

3296 (ii) preserve the limited liability company activities, affairs, and property as a going
3297 concern for a reasonable time;

3298 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or
3299 administrative;

3300 (iv) transfer the limited liability company's property;

3301 (v) settle disputes by mediation or arbitration;

3302 (vi) deliver to the division for filing a statement of termination stating the name of the
3303 limited liability company and that the limited liability company is terminated; and

3304 (vii) perform other acts necessary or appropriate to the winding up.

3305 (3) (a) If a dissolved limited liability company has no members, the legal representative
3306 of the last person to have been a member may wind up the activities and affairs of the limited
3307 liability company.

3308 (b) If the person does so, the person has the powers of a sole manager under Subsection
3309 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1).

3310 (4) If the legal representative under Subsection (3) declines or fails to wind up the
3311 limited liability company's activities and affairs, a person may be appointed to do so by the

3312 consent of transferees owning a majority of the rights to receive distributions as transferees at
3313 the time the consent is to be effective. A person appointed under this Subsection (4):

3314 (a) has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to
3315 be a manager for the purposes of Subsection 48-3a-304(1); and

3316 (b) shall promptly deliver to the division for filing an amendment to the limited
3317 liability company's certificate of organization stating:

3318 (i) that the limited liability company has no members;

3319 (ii) the name and street and mailing addresses of the person; and

3320 (iii) that the person has been appointed pursuant to this subsection to wind up the
3321 limited liability company.

3322 (5) A [~~district~~] court may order judicial supervision of the winding up of a dissolved
3323 limited liability company, including the appointment of a person to wind up the limited liability
3324 company's activities and affairs:

3325 (a) [~~on application of a member, if the applicant~~] upon a petition by a member if the
3326 member establishes good cause;

3327 (b) [~~on the application of a transferee,~~] upon a petition by a transferee if:

3328 (i) the company does not have any members;

3329 (ii) the legal representative of the last person to have been a member declines or fails to
3330 wind up the limited liability company's activities; and

3331 (iii) within a reasonable time following the dissolution a person has not been appointed
3332 pursuant to Subsection (4); or

3333 (c) in connection with a proceeding under Subsection 48-3a-701(4) or (5).

3334 Section 76. Section 48-3a-704 is amended to read:

3335 **48-3a-704. Rescinding dissolution.**

3336 (1) A limited liability company may rescind [~~its~~] the limited liability company's
3337 dissolution, unless a statement of termination applicable to the limited liability company is
3338 effective, [~~the district court~~] a court has entered an order under Subsection 48-3a-701(4) or (5)
3339 dissolving the limited liability company, or the division has dissolved the limited liability
3340 company under Section 48-3a-708.

3341 (2) Rescinding dissolution under this section requires:

3342 (a) the consent of each member;

3343 (b) if a statement of dissolution applicable to the limited liability company has been
3344 filed by the division but has not become effective, the delivery to the division for filing of a
3345 statement of withdrawal under Section 48-3a-207 applicable to the statement of dissolution;
3346 and

3347 (c) if a statement of dissolution applicable to the limited liability company is effective,
3348 the delivery to the division for filing of a statement of correction under Section 48-3a-208
3349 stating that dissolution has been rescinded under this section.

3350 (3) If a limited liability company rescinds its dissolution:

3351 (a) the limited liability company resumes carrying on its activities and affairs as if
3352 dissolution had never occurred;

3353 (b) subject to Subsection (3)(c), any liability incurred by the limited liability company
3354 after the dissolution and before the rescission is effective is determined as if dissolution had
3355 never occurred; and

3356 (c) the rights of a third party arising out of conduct in reliance on the dissolution before
3357 the third party knew or had notice of the rescission may not be adversely affected.

3358 Section 77. Section 48-3a-707 is amended to read:

3359 **48-3a-707. Court proceedings.**

3360 (1) (a) A dissolved limited liability company that has published a notice under Section
3361 48-3a-706 may ~~[file an application with district court in the county where the dissolved limited~~
3362 ~~liability company's principal office is located, or, if the principal office is not located in this~~
3363 ~~state, where the office of its registered agent is located,]~~ petition a court with jurisdiction under
3364 Title 78A Judiciary and Judicial Administration, for a determination of the amount and form of
3365 security to be provided for payment of claims that are contingent, have not been made known
3366 to the limited liability company, or are based on an event occurring after the effective date of
3367 dissolution but which, based on the facts known to the dissolved limited liability company, are
3368 reasonably expected to arise after the effective date of dissolution.

3369 (b) Security is not required for any claim that is or is reasonably anticipated to be
3370 barred under Subsection 48-3a-706(3).

3371 (2) ~~[Not]~~ No later than 10 days after the filing of an application under Subsection (1),
3372 the dissolved limited liability company shall give notice of the proceeding to each claimant
3373 holding a contingent claim known to the limited liability company.

3374 (3) (a) In any proceeding under this section, the court may appoint a guardian ad litem
3375 to represent all claimants whose identities are unknown.

3376 (b) The reasonable fees and expenses of the guardian, including all reasonable expert
3377 witness fees, must be paid by the dissolved limited liability company.

3378 (4) A dissolved limited liability company that provides security in the amount and form
3379 ordered by the court under Subsection (1) satisfies the limited liability company's obligations
3380 with respect to claims that are contingent, have not been made known to the limited liability
3381 company, or are based on an event occurring after the effective date of dissolution, and such
3382 claims may not be enforced against a member or transferee that received assets in liquidation.

3383 Section 78. Section **48-3a-1003** is amended to read:

3384 **48-3a-1003. Required notice or approval.**

3385 (1) A domestic or foreign entity that is required to give notice to, or obtain the approval
3386 of, a governmental agency or officer of this state to be a party to a merger must give the notice
3387 or obtain the approval to be a party to an interest exchange, conversion, or domestication.

3388 (2) Property held for a charitable purpose under the law of this state by a domestic or
3389 foreign entity immediately before a transaction under this part becomes effective may not, as a
3390 result of the transaction, be diverted from the objects for which it was donated, granted,
3391 devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this
3392 state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity
3393 obtains [~~an appropriate order of the district court~~] a court order specifying the disposition of the
3394 property.

3395 (3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
3396 donation, subscription, or conveyance that is made to a merging entity that is not the surviving
3397 entity and that takes effect or remains payable after the merger inures to the surviving entity. A
3398 trust obligation that would govern property if transferred to the nonsurviving entity applies to
3399 property that is transferred to the surviving entity under this section.

3400 Section 79. Section **48-3a-1111** is amended to read:

3401 **48-3a-1111. Purchase of interest upon death, incapacity, or disqualification of**
3402 **member.**

3403 (1) Subject to this part, one or more of the following may provide for the purchase of a
3404 member's interest in a professional services company upon the death, incapacity, or

3405 disqualification of the member:

3406 (a) the certificate of organization;

3407 (b) the operating agreement; or

3408 (c) a private agreement.

3409 (2) In the absence of a provision described in Subsection (1), a professional services
3410 company shall purchase the interest of a member who is deceased, incapacitated, or no longer
3411 qualified to own an interest in the professional services company within 90 days after the day
3412 on which the professional services company is notified of the death, incapacity, or
3413 disqualification.

3414 (3) If a professional services company purchases a member's interest under Subsection
3415 (2), the professional services company shall purchase the interest at a price that is the
3416 reasonable fair market value as of the date of death, incapacity, or disqualification.

3417 (4) If a professional services company fails to purchase a member's interest as required
3418 by Subsection (2) at the end of the 90-day period described in Subsection (2), ~~one of the~~
3419 ~~following may bring an action in the district court of the county in which the principal office or~~
3420 ~~place of practice of the professional services company is located]~~ the following persons may
3421 bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial
3422 Administration, to enforce Subsection (2):

3423 (a) the personal representative of a deceased member;

3424 (b) the guardian or conservator of an incapacitated member; or

3425 (c) the disqualified member.

3426 (5) A court in which an action is brought under Subsection (4) may:

3427 (a) award the person bringing the action the reasonable fair market value of the
3428 interest; or

3429 (b) within [its] the court's jurisdiction, order the liquidation of the professional services
3430 company.

3431 (6) If a person described in Subsections (4)(a) through (c) is successful in an action
3432 under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

3433 Section 80. Section ~~57-8-44~~ is amended to read:

3434 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
3435 **collection.**

3436 (1) (a) Except as provided in Section 57-8-13.1, an association of unit owners has a
3437 lien on a unit for:

3438 (i) an assessment;

3439 (ii) except as provided in the declaration, fees, charges, and costs associated with
3440 collecting an unpaid assessment, including:

3441 (A) court costs and reasonable attorney fees;

3442 (B) late charges;

3443 (C) interest; and

3444 (D) any other amount that the association of unit owners is entitled to recover under the
3445 declaration, this chapter, or an administrative or judicial decision; and

3446 (iii) a fine that the association of unit owners imposes against a unit owner in
3447 accordance with Section 57-8-37, if:

3448 (A) the time for appeal described in Subsection 57-8-37(5) has expired and the unit
3449 owner did not file an appeal; or

3450 (B) the unit owner timely filed an appeal under Subsection 57-8-37(5) and [the district]
3451 a court issued a final order upholding a fine imposed under Subsection 57-8-37(1).

3452 (b) The recording of a declaration constitutes record notice and perfection of a lien
3453 described in Subsection (1)(a).

3454 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
3455 is for the full amount of the assessment from the time the first installment is due, unless the
3456 association of unit owners otherwise provides in a notice of assessment.

3457 (3) An unpaid assessment or fine accrues interest at the rate provided:

3458 (a) in Subsection 15-1-1(2); or

3459 (b) in the governing documents, if the governing documents provide for a different
3460 interest rate.

3461 (4) A lien under this section has priority over each other lien and encumbrance on a
3462 unit except:

3463 (a) a lien or encumbrance recorded before the declaration is recorded;

3464 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
3465 that is recorded before a recorded notice of lien by or on behalf of the association of unit
3466 owners; or

3467 (c) a lien for real estate taxes or other governmental assessments or charges against the
3468 unit.

3469 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
3470 Exemptions Act.

3471 (6) Unless the declaration provides otherwise, if two or more associations of unit
3472 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
3473 when the liens are created.

3474 Section 81. Section **57-8a-301** is amended to read:

3475 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

3476 (1) (a) Except as provided in Section [57-8a-105](#), an association has a lien on a lot for:

3477 (i) an assessment;

3478 (ii) except as provided in the declaration, fees, charges, and costs associated with
3479 collecting an unpaid assessment, including:

3480 (A) court costs and reasonable attorney fees;

3481 (B) late charges;

3482 (C) interest; and

3483 (D) any other amount that the association is entitled to recover under the declaration,
3484 this chapter, or an administrative or judicial decision; and

3485 (iii) a fine that the association imposes against a lot owner in accordance with Section
3486 [57-8a-208](#), if:

3487 (A) the time for appeal described in Subsection [57-8a-208\(5\)](#) has expired and the lot
3488 owner did not file an appeal; or

3489 (B) the lot owner timely filed an appeal under Subsection [57-8a-208\(5\)](#) and [~~the~~
3490 ~~district~~] a court issued a final order upholding a fine imposed under Subsection [57-8a-208\(1\)](#).

3491 (b) The recording of a declaration constitutes record notice and perfection of a lien
3492 described in Subsection (1)(a).

3493 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
3494 is for the full amount of the assessment from the time the first installment is due, unless the
3495 association otherwise provides in a notice of assessment.

3496 (3) An unpaid assessment or fine accrues interest at the rate provided:

3497 (a) in Subsection [15-1-1\(2\)](#); or

- 3498 (b) in the declaration, if the declaration provides for a different interest rate.
- 3499 (4) A lien under this section has priority over each other lien and encumbrance on a lot
- 3500 except:
- 3501 (a) a lien or encumbrance recorded before the declaration is recorded;
- 3502 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
- 3503 is recorded before a recorded notice of lien by or on behalf of the association; or
- 3504 (c) a lien for real estate taxes or other governmental assessments or charges against the
- 3505 lot.
- 3506 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
- 3507 Exemptions Act.
- 3508 (6) Unless the declaration provides otherwise, if two or more associations have liens
- 3509 for assessments on the same lot, the liens have equal priority, regardless of when the liens are
- 3510 created.
- 3511 Section 82. Section **57-17-5** is amended to read:
- 3512 **57-17-5. Failure to return deposit or prepaid rent or to give required notice --**
- 3513 **Recovery of deposit, penalty, costs, and attorney fees.**
- 3514 (1) If an owner or the owner's agent fails to comply with the requirements described in
- 3515 Subsection **57-17-3(5)**, the renter may:
- 3516 (a) recover from the owner:
- 3517 (i) if the owner or the owner's agent failed to timely return the balance of the renter's
- 3518 deposit, the full deposit;
- 3519 (ii) if the owner or the owner's agent failed to timely return the balance of the renter's
- 3520 prepaid rent, the full amount of the prepaid rent; and
- 3521 (iii) a civil penalty of \$100; and
- 3522 (b) file an action [~~in district court~~] to enforce compliance with the provisions of this
- 3523 section.
- 3524 (2) In an action under Subsection (1)(b), the court shall award costs and attorney fees
- 3525 to the prevailing party if the court determines that the opposing party acted in bad faith.
- 3526 (3) A renter is not entitled to relief under this section if the renter fails to serve a notice
- 3527 in accordance with Subsection **57-17-3(3)**.
- 3528 (4) This section does not preclude an owner or a renter from recovering other damages

3529 to which the owner or the renter is entitled.

3530 Section 83. Section **57-19-20** is amended to read:

3531 **57-19-20. Injunctive relief -- Cease and desist order.**

3532 (1) Whenever it appears to the director that any person has engaged or is about to
3533 engage in any act or practice constituting a violation of any provision of this chapter, and that it
3534 would be in the public interest to stop those acts or practices, the director may either:

3535 (a) seek injunctive relief as provided in Rule 65A, Utah Rules of Civil Procedure; or

3536 (b) issue an administrative cease and desist order.

3537 (2) If an administrative cease and desist order is issued pursuant to Subsection (1), the
3538 person upon whom the order is served may, within 10 days after receiving the order, request
3539 that a hearing be held before an administrative law judge. If a request for a hearing is made,
3540 the division shall follow the procedures and requirements of Title 63G, Chapter 4,
3541 Administrative Procedures Act. Pending the hearing, the order remains in effect.

3542 (3) (a) If, at the hearing, a finding is made that there has been a violation of this
3543 chapter, the director, with the concurrence of the executive director, may issue an order making
3544 the cease and desist order permanent.

3545 (b) If no hearing is requested, and if the person fails to cease the act or practice, or after
3546 discontinuing the act or practice again commences [it] the act or practice, the director shall [~~file~~
3547 ~~suit in the district court of the county in which the act or practice occurred, or where the person~~
3548 ~~resides or carries on business,] bring an action in a court with jurisdiction under Title 78A,
3549 Judiciary and Judicial Administration, to enjoin and restrain the person from violating this
3550 chapter.~~

3551 (4) (a) Whether or not the director has issued a cease and desist order, the attorney
3552 general, in the name of the state or of the director, may bring an action [~~in any court of~~
3553 ~~competent jurisdiction]~~ in a court with jurisdiction under Title 78A, Judiciary and Judicial
3554 Administration, to enjoin any act or practice constituting a violation of any provision of this
3555 chapter, and to enforce compliance with this chapter or any rule or order under this chapter.

3556 (b) Upon a proper showing, a permanent or temporary injunction, restraining order, or
3557 writ of mandamus shall be granted.

3558 Section 84. Section **57-21-11** is amended to read:

3559 **57-21-11. Relief granted -- Civil penalties -- Enforcement of final order.**

3560 (1) Under Sections 57-21-9 and 57-21-10, if the director, presiding officer,
3561 commissioner, Appeals Board, or court finds reasonable cause to believe that a discriminatory
3562 housing practice has occurred or is about to occur, the director, presiding officer,
3563 commissioner, Appeals Board, or court may order, as considered appropriate:

- 3564 (a) the respondent to cease any discriminatory housing practice;
- 3565 (b) actual damages, reasonable attorneys' fees and costs to the aggrieved person; and
- 3566 (c) any permanent or temporary injunction, temporary restraining order, or other
3567 appropriate order.

3568 (2) In addition to the relief granted to an aggrieved person under Subsection (1), in
3569 order to vindicate the public interest, the director, presiding officer, or court may also assess
3570 civil penalties against the respondent in an amount not exceeding:

- 3571 (a) \$10,000 if the respondent has not been adjudged to have committed any prior
3572 discriminatory housing practice;
- 3573 (b) \$25,000 if the respondent has been adjudged to have committed one other
3574 discriminatory housing practice during the five-year period ending on the date of the filing of
3575 the complaint; or
- 3576 (c) \$50,000 if the respondent has been adjudged to have committed two or more
3577 discriminatory housing practices during the seven-year period ending on the date of the filing
3578 of this complaint.

3579 (3) The time periods in Subsections (2)(b) and (c) may be disregarded if the acts
3580 constituting the discriminatory housing practice are committed by the same natural person who
3581 has previously been adjudged to have committed a discriminatory housing practice.

3582 (4) The division may [~~file a petition in a district court of competent jurisdiction~~]
3583 petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for:

- 3584 (a) the enforcement of a final department order; and
- 3585 (b) for any appropriate temporary relief or restraining order necessary for the
3586 enforcement of a final commission order.

3587 Section 85. Section 57-22-6 is amended to read:

3588 **57-22-6. Renter remedies for deficient condition of residential rental unit.**

3589 (1) As used in this section:

- 3590 (a) "Corrective period" means:

- 3591 (i) for a standard of habitability, three calendar days; and
3592 (ii) for a requirement imposed by a rental agreement, 10 calendar days.
3593 (b) "Deficient condition" means a condition of a residential rental unit that:
3594 (i) violates a standard of habitability or a requirement of the rental agreement; and
3595 (ii) is not caused by:
3596 (A) the renter, the renter's family, or the renter's guest or invitee; and
3597 (B) a use that would violate:
3598 (I) the rental agreement; or
3599 (II) a law applicable to the renter's use of the residential rental unit.
3600 (c) "Notice of deficient condition" means the notice described in Subsection (2).
3601 (d) "Rent abatement remedy" means the remedy described in Subsection (4)(a)(i).
3602 (e) "Renter remedy" means:
3603 (i) a rent abatement remedy; or
3604 (ii) a repair and deduct remedy.
3605 (f) "Repair and deduct remedy" means the remedy described in Subsection (4)(a)(ii).
3606 (g) "Standard of habitability" means a standard:
3607 (i) relating to the condition of a residential rental unit; and
3608 (ii) that an owner is required to ensure that the residential rental unit meets as required
3609 under Subsection 57-22-3(1) or Subsection 57-22-4(1)(a) or (b)(i), (ii), or (iii).
3610 (2) (a) If a renter believes that the renter's residential rental unit has a deficient
3611 condition, the renter may give the owner written notice as provided in Subsection (2)(b).
3612 (b) A notice under Subsection (2)(a) shall:
3613 (i) describe each deficient condition;
3614 (ii) state that the owner has the corrective period, stated in terms of the applicable
3615 number of days, to correct each deficient condition;
3616 (iii) state the renter remedy that the renter has chosen if the owner does not, within the
3617 corrective period, take substantial action toward correcting each deficient condition;
3618 (iv) provide the owner permission to enter the residential rental unit to make corrective
3619 action; and
3620 (v) be served on the owner as provided in:
3621 (A) Section 78B-6-805; or

3622 (B) the rental agreement.

3623 (3) (a) As used in this Subsection (3), "dangerous condition" means a deficient
3624 condition that poses a substantial risk of:

3625 (i) imminent loss of life; or

3626 (ii) significant physical harm.

3627 (b) If a renter believes that the renter's residential rental unit has a dangerous condition,
3628 the renter may notify the owner of the dangerous condition by any means that is reasonable
3629 under the circumstances.

3630 (c) An owner shall:

3631 (i) within 24 hours after receiving notice under Subsection (3)(b) of a dangerous
3632 condition, commence remedial action to correct the dangerous condition; and

3633 (ii) diligently pursue remedial action to completion.

3634 (d) Notice under Subsection (3)(b) of a dangerous condition does not constitute a
3635 notice of deficient condition, unless the notice also meets the requirements of Subsection (2).

3636 (4) (a) Subject to Subsection (4)(b), if an owner fails to take substantial action, before
3637 the end of the corrective period, toward correcting a deficient condition described in a notice of
3638 deficient condition:

3639 (i) if the renter chose the rent abatement remedy in the notice of deficient condition:

3640 (A) the renter's rent is abated as of the date of the notice of deficient condition to the
3641 owner;

3642 (B) the rental agreement is terminated;

3643 (C) the owner shall immediately pay to the renter:

3644 (I) the entire security deposit that the renter paid under the rental agreement; and

3645 (II) a prorated refund for any prepaid rent, including any rent the renter paid for the
3646 period after the date on which the renter gave the owner the notice of deficient condition; and

3647 (D) the renter shall vacate the residential rental unit within 10 calendar days after the
3648 expiration of the corrective period; or

3649 (ii) if the renter chose the repair and deduct remedy in the notice of deficient condition,
3650 and subject to Subsection (4)(c), the renter:

3651 (A) may:

3652 (I) correct the deficient condition described in the notice of deficient condition; and

3653 (II) deduct from future rent the amount the renter paid to correct the deficient
3654 condition, not to exceed an amount equal to two months' rent; and
3655 (B) shall:
3656 (I) maintain all receipts documenting the amount the renter paid to correct the deficient
3657 condition; and
3658 (II) provide a copy of those receipts to the owner within five calendar days after the
3659 beginning of the next rental period.
3660 (b) A renter is not entitled to a renter remedy if the renter is not in compliance with all
3661 requirements under Section [57-22-5](#).
3662 (c) (i) If a residential rental unit is not fit for occupancy, an owner may:
3663 (A) determine not to correct a deficient condition described in a notice of deficient
3664 condition; and
3665 (B) terminate the rental agreement.
3666 (ii) If an owner determines not to correct a deficient condition and terminates the rental
3667 agreement under Subsection (4)(c)(i):
3668 (A) the owner shall:
3669 (I) notify the renter in writing no later than the end of the corrective period; and
3670 (II) within 10 calendar days after the owner terminates the rental agreement, pay to the
3671 renter:
3672 (Aa) any prepaid rent, prorated as provided in Subsection (4)(c)(ii)(B); and
3673 (Bb) any deposit due the renter;
3674 (B) the rent shall be prorated to the date the owner terminates the rental agreement
3675 under Subsection (4)(c)(i); and
3676 (C) the renter may not be required to vacate the residential rental unit sooner than 10
3677 calendar days after the owner notifies the renter under Subsection (4)(c)(ii)(A)(I).
3678 (5) (a) After the corrective period expires, a renter may bring [~~an action in district~~
3679 ~~court~~] an action in a court with jurisdiction under Title 78A, Judiciary and Judicial
3680 Administration, to enforce the renter remedy that the renter chose in the notice of deficient
3681 condition.
3682 (b) In an action under Subsection (5)(a), the court shall endorse on the summons that
3683 the owner is required to appear and defend the action within three business days.

3684 (c) If, in an action under Subsection (5)(a), the court finds that the owner unjustifiably
3685 refused to correct a deficient condition or failed to use due diligence to correct a deficient
3686 condition, the renter is entitled to any damages, in addition to the applicable renter remedy.

3687 (d) An owner who disputes that a condition of the residential rental unit violates a
3688 requirement of the rental agreement may file a counterclaim in an action brought against the
3689 owner under Subsection (5)(a).

3690 (6) An owner may not be held liable under this chapter for a claim for mental suffering
3691 or anguish.

3692 (7) In an action under this chapter, the court may award costs and reasonable attorney
3693 fees to the prevailing party.

3694 Section 86. Section 57-23-7 is amended to read:

3695 **57-23-7. Investigatory powers and proceedings of division.**

3696 (1) The division may:

3697 (a) make necessary public or private investigations within or outside of this state to
3698 determine whether any person has violated or is about to violate this chapter or any rule or
3699 order made by the division under this chapter; and

3700 (b) require or permit any person to file a statement in writing, under oath or otherwise
3701 as the division determines, as to all the facts and circumstances concerning the matter to be
3702 investigated.

3703 (2) For the purpose of any investigation or proceeding under this chapter:

3704 (a) the division may administer oaths or affirmations; and

3705 (b) upon its own motion or upon the request of any party, the division may:

3706 (i) subpoena witnesses;

3707 (ii) compel their attendance;

3708 (iii) take evidence; and

3709 (iv) require the production of any matter which is relevant to the investigation,

3710 including:

3711 (A) the existence, description, nature, custody, condition and location of any books,
3712 documents, or other tangible records;

3713 (B) the identity and location of persons having knowledge of relevant facts; or

3714 (C) any other matter reasonably calculated to lead to the discovery of material

3715 evidence.

3716 (3) Upon failure of any person to obey a subpoena or to answer questions propounded
3717 by the investigating officer and upon reasonable notice to all persons affected by the subpoena
3718 or information sought to be discovered under the subpoena, the division may [~~apply to the~~
3719 ~~district court~~] petition a court with jurisdiction under Title 78A, Judiciary and Judicial
3720 Administration, for an order compelling compliance.

3721 Section 87. Section **57-23-8** is amended to read:

3722 **57-23-8. Enforcement powers of division -- Cease and desist orders.**

3723 (1) (a) If the director has reason to believe that any person has been or is engaging in
3724 conduct violating this chapter, or has violated any lawful order or rule of the division, the
3725 director shall issue and serve upon the person a cease and desist order. The director may also
3726 order the person to take whatever affirmative actions the director determines to be necessary to
3727 carry out the purposes of this chapter.

3728 (b) The person served with an order under Subsection (1)(a) may request an
3729 adjudicative proceeding within 10 days after receiving the order. The cease and desist order
3730 remains in effect pending the hearing.

3731 (c) The division shall follow the procedures and requirements of Title 63G, Chapter 4,
3732 Administrative Procedures Act, if the person served requests a hearing.

3733 (2) (a) After the hearing the director may issue a final order making the cease and
3734 desist order permanent if the director finds there has been a violation of this chapter.

3735 (b) If no hearing is requested and the person served does not obey the director's order,
3736 the director may [~~file suit~~] bring an action in a court with jurisdiction under Title 78A,
3737 Judiciary and Judicial Administration, in the name of the Department of Commerce and the
3738 Division of Real Estate to enjoin the person from violating this chapter. [~~The action shall be~~
3739 ~~filed in the district court in the county in which the conduct occurred, where the person served~~
3740 ~~with the cease and desist order either resides or carries on business.~~]

3741 (3) The remedies and action provided in this section are not exclusive but are in
3742 addition to any other remedies or actions available under Section **57-23-10**.

3743 Section 88. Section **57-29-303** is amended to read:

3744 **57-29-303. Investigatory powers and proceedings of division.**

3745 (1) The division may:

3746 (a) conduct a public or private investigation to determine whether a person has violated
3747 or is about to violate a provision of this chapter; and

3748 (b) require or allow a person to file a written statement with the division that relates to
3749 the facts and circumstances concerning a matter to be investigated.

3750 (2) For the purpose of an investigation or proceeding under this chapter, the division
3751 may:

3752 (a) administer oaths or affirmations; and

3753 (b) upon the division's own initiative or upon the request of any party:

3754 (i) subpoena a witness;

3755 (ii) compel a witness's attendance;

3756 (iii) take evidence; or

3757 (iv) require the production, within 10 business days, of any information or item that is
3758 relevant to the investigation, including:

3759 (A) the existence, description, nature, custody, condition, and location of any books,
3760 electronic records, documents, or other tangible records;

3761 (B) the identity and location of any person who has knowledge of relevant facts; or

3762 (C) any other information or item that is reasonably calculated to lead to the discovery
3763 of material evidence.

3764 (3) If a person fails to obey a subpoena or other request made in accordance with this
3765 section, the division may ~~[file an action in district court]~~ petition a court with jurisdiction under
3766 Title 78A, Judiciary and Judicial Administration, for an order compelling compliance.

3767 Section 89. Section **57-29-304** is amended to read:

3768 **57-29-304. Enforcement.**

3769 (1) (a) If the director believes that a person has been or is engaging in conduct that
3770 violates this chapter, the director:

3771 (i) shall issue and serve upon the person a cease and desist order; and

3772 (ii) may order the person to take any action necessary to carry out the purposes of this
3773 chapter.

3774 (b) (i) A person served with an order under Subsection (1)(a) may request a hearing
3775 within 10 days after the day on which the person is served.

3776 (ii) (A) If a person requests a hearing in accordance with Subsection (1)(b)(i), the

3777 director shall schedule a hearing to take place no more than 30 days after the day on which the
3778 director receives the request.

3779 (B) The cease and desist order remains in effect pending the hearing.

3780 (iii) If the director fails to schedule a hearing in accordance with Subsection

3781 (1)(b)(ii)(A), the cease and desist order is vacated.

3782 (c) The division shall conduct a hearing described in Subsection (1)(b) in accordance
3783 with Title 63G, Chapter 4, Administrative Procedures Act.

3784 (2) After a hearing described in Subsection (1)(b):

3785 (a) if the director finds that the person violated this chapter, the director may issue a
3786 final order making the cease and desist order permanent; or

3787 (b) if the director finds that the person did not violate this chapter, the director shall
3788 vacate the cease and desist order.

3789 (3) If a person served with an order under Subsection (1)(a) does not request a hearing
3790 and the person fails to comply with the director's order, the director may ~~[file suit in district~~
3791 ~~court]~~ bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial
3792 Administration, in the name of the Department of Commerce and the Division of Real Estate to
3793 enjoin the person from violating this chapter.

3794 (4) The remedies and action provided in this section are not exclusive but are in
3795 addition to any other remedies or actions available under Section [57-29-305](#).

3796 Section 90. Section **61-1-20** is amended to read:

3797 **61-1-20. Enforcement.**

3798 (1) Whenever it appears to the director that a person has engaged, is engaging, or is
3799 about to engage in an act or practice constituting a violation of this chapter or a rule or order
3800 under this chapter, in addition to specific powers granted in this chapter:

3801 (a) the director may issue an order directing the person to appear before the
3802 commission and show cause why an order should not be issued directing the person to cease
3803 and desist from engaging in the act or practice, or doing an act in furtherance of the activity;

3804 (b) the order to show cause shall state the reasons for the order and the date of the
3805 hearing;

3806 (c) the director shall promptly serve a copy of the order to show cause upon a person
3807 named in the order;

3808 (d) the commission shall hold a hearing on the order to show cause no sooner than 10
3809 business days after the order is issued;

3810 (e) after a hearing, the commission may:

3811 (i) issue an order to cease and desist from engaging in an act or practice constituting a
3812 violation of this chapter or a rule or order under this chapter;

3813 (ii) impose a fine in an amount determined after considering the factors set forth in
3814 Section 61-1-31;

3815 (iii) order disgorgement;

3816 (iv) order restitution;

3817 (v) order rescission;

3818 (vi) bar or suspend that person from associating with a licensed broker-dealer or
3819 investment adviser in this state; and

3820 (vii) impose a combination of sanctions in this Subsection (1)(e).

3821 (2) (a) The director may bring an action in the appropriate [~~district~~] court of this state
3822 or the appropriate court of another state to enjoin an act or practice and to enforce compliance
3823 with this chapter or a rule or order under this chapter.

3824 (b) Upon a proper showing in an action brought under this section, the court may:

3825 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

3826 (ii) issue a restraining order or writ of mandamus;

3827 (iii) enter a declaratory judgment;

3828 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

3829 (v) order disgorgement;

3830 (vi) order rescission;

3831 (vii) order restitution;

3832 (viii) impose a fine in an amount determined after considering the factors set forth in
3833 Section 61-1-31; and

3834 (ix) enter any other relief the court considers just.

3835 (c) The court may not require the division to post a bond in an action brought under
3836 this Subsection (2).

3837 (3) An order issued under Subsection (1) shall be accompanied by written findings of
3838 fact and conclusions of law.

3839 (4) When determining the severity of a sanction to be imposed under this section, the
3840 commission or court shall consider whether:

3841 (a) the person against whom the sanction is to be imposed exercised undue influence;
3842 or

3843 (b) the person against whom the sanction is imposed under this section knows or
3844 should know that an investor in the investment that is the grounds for the sanction is a
3845 vulnerable adult.

3846 Section 91. Section **61-1-105** is amended to read:

3847 **61-1-105. Remedies for employee bringing action.**

3848 (1) As used in this section, "actual damages" means damages for injury or loss caused
3849 by a violation of Section [61-1-104](#).

3850 (2) (a) An employee who alleges a violation of Section [61-1-104](#) may bring [~~a civil~~] an
3851 action for injunctive relief, actual damages, or both, in a court with jurisdiction under Title
3852 78A, Judiciary and Judicial Administration.

3853 (b) An employee may not bring [~~a civil~~] an action under this section more than:

3854 (i) four years after the day on which the violation of Section [61-1-104](#) occurs; or

3855 (ii) two years after the date when facts material to the right of action are known or
3856 reasonably should be known by the employee alleging a violation of Section [61-1-104](#).

3857 [~~(3) An employee may bring an action under this section in the district court for the~~
3858 ~~county where:]~~

3859 [~~(a) the alleged violation occurs;]~~

3860 [~~(b) the employee resides; or]~~

3861 [~~(c) the person against whom the civil complaint is filed resides or has a principal place~~
3862 ~~of business.]~~

3863 [~~(4)~~] (3) To prevail in an action brought under this section, an employee shall establish,
3864 by a preponderance of the evidence, that the employee has suffered an adverse action because
3865 the employee, or a person acting on the employee's behalf, engaged or intended to engage in an
3866 activity protected under Section [61-1-104](#).

3867 [~~(5)~~] (4) A court may award as relief for an employee prevailing in an action brought
3868 under this section:

3869 (a) reinstatement with the same fringe benefits and seniority status that the individual

3870 would have had, but for the adverse action;

3871 (b) two times the amount of back pay otherwise owed to the individual, with interest;

3872 (c) compensation for litigation costs, expert witness fees, and reasonable attorney fees;

3873 (d) actual damages; or

3874 (e) any combination of the remedies listed in this Subsection [~~(5)~~] (4).

3875 [~~(6)~~] (5) (a) An employer may file a counter claim against an employee who files a
3876 civil action under this section seeking attorney fees and costs incurred by the employer related
3877 to the action filed by the employee and the counter claim.

3878 (b) The court may award an employer who files a counter claim under this Subsection
3879 [~~(6)~~] (5) attorney fees and costs if the court finds that:

3880 (i) there is no reasonable basis for the civil action filed by the employee; or

3881 (ii) the employee is not protected under Section 61-1-104 because:

3882 (A) the employee engaged in an act described in Subsections 61-1-104(2)(a) through
3883 (c); or

3884 (B) Subsection 61-1-104(2)(d) applies.

3885 Section 92. Section 61-2-203 is amended to read:

3886 **61-2-203. Adjudicative proceedings -- Citation authority.**

3887 (1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures
3888 Act, in an adjudicative proceeding under a chapter the division administers.

3889 (2) The division may initiate an adjudicative proceeding through:

3890 (a) a notice of agency action; or

3891 (b) a notice of formal or informal proceeding.

3892 (3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not
3893 apply to the issuance of a citation under Subsection (4), unless a licensee or another person
3894 authorized by law to contest the validity or correctness of a citation commences an adjudicative
3895 proceeding contesting the citation.

3896 (4) In addition to any other statutory penalty for a violation related to an occupation or
3897 profession regulated under this title, the division may issue a citation to a person who, upon
3898 inspection or investigation, the division concludes to have violated:

3899 (a) Subsection 61-2c-201(1), which requires licensure;

3900 (b) Subsection 61-2c-201(4), which requires licensure;

- 3901 (c) Subsection 61-2c-205(3), which requires notification of a change in specified
3902 information regarding a licensee;
- 3903 (d) Subsection 61-2c-205(4), which requires notification of a specified legal action;
- 3904 (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division
3905 within the required time period;
- 3906 (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the
3907 division;
- 3908 (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
- 3909 (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading
3910 advertising;
- 3911 (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed
3912 work if unlicensed;
- 3913 (j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a
3914 quarterly report of condition;
- 3915 (k) Subsection 61-2e-201(1), which requires registration;
- 3916 (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;
- 3917 (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;
- 3918 (n) Subsection 61-2e-401(1)(c), which prohibits failure to respond to a division
3919 request;
- 3920 (o) Subsection 61-2f-201(1), which requires licensure;
- 3921 (p) Subsection 61-2f-206(1), which requires registration;
- 3922 (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;
- 3923 (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;
- 3924 (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated
3925 with a principal broker;
- 3926 (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records and
3927 prohibits failing to make the specified records available for division inspection;
- 3928 (u) Subsection 61-2f-401(12), which prohibits false, misleading, or deceptive
3929 advertising;
- 3930 (v) Subsection 61-2f-401(18), which prohibits failing to respond to a division request;
- 3931 (w) Subsection 61-2g-301(1), which requires licensure;

3932 (x) Subsection 61-2g-405(3), which requires making records required to be maintained
3933 available to the division;

3934 (y) Subsection 61-2g-501(2)(c), which requires a person to respond to a division
3935 request in an investigation within 10 days after the day on which the request is served;

3936 (z) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;

3937 (aa) a rule made pursuant to any Subsection listed in this Subsection (4);

3938 (bb) an order of the division; or

3939 (cc) an order of the commission or board that oversees the person's profession.

3940 (5) (a) In accordance with Subsection (10), the division may assess a fine against a
3941 person for a violation of a provision listed in Subsection (4), as evidenced by:

3942 (i) an uncontested citation;

3943 (ii) a stipulated settlement; or

3944 (iii) a finding of a violation in an adjudicative proceeding.

3945 (b) The division may, in addition to or in lieu of a fine under Subsection (5)(a), order
3946 the person to cease and desist from an activity that violates a provision listed in Subsection (4).

3947 (6) Except as provided in Subsection (8)(d), the division may not use a citation to
3948 effect a license:

3949 (a) denial;

3950 (b) probation;

3951 (c) suspension; or

3952 (d) revocation.

3953 (7) (a) A citation issued by the division shall:

3954 (i) be in writing;

3955 (ii) describe with particularity the nature of the violation, including a reference to the
3956 provision of the statute, rule, or order alleged to have been violated;

3957 (iii) clearly state that the recipient must notify the division in writing within 20
3958 calendar days after the day on which the citation is served if the recipient wishes to contest the
3959 citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

3960 (iv) clearly explain the consequences of failure to timely contest the citation or to make
3961 payment of a fine assessed by the citation within the time period specified in the citation.

3962 (b) The division may issue a notice in lieu of a citation.

- 3963 (8) (a) A citation becomes final:
- 3964 (i) if within 20 calendar days after the day on which the citation is served, the person to
- 3965 whom the citation was issued fails to request a hearing to contest the citation; or
- 3966 (ii) if the director or the director's designee conducts a hearing pursuant to a timely
- 3967 request for a hearing and issues an order finding that a violation has occurred.
- 3968 (b) The division may extend, for cause, the 20-day period to contest a citation.
- 3969 (c) A citation that becomes the final order of the division due to a person's failure to
- 3970 timely request a hearing is not subject to further agency review.
- 3971 (d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on
- 3972 probation the license of a licensee who fails to comply with a citation after the citation
- 3973 becomes final.
- 3974 (ii) The failure of a license applicant to comply with a citation after the citation
- 3975 becomes final is a ground for denial of the license application.
- 3976 (9) (a) The division may not issue a citation under this section after the expiration of
- 3977 one year after the day on which the violation occurs.
- 3978 (b) The division may issue a notice to address a violation that is outside of the one-year
- 3979 citation period.
- 3980 (10) The director or the director's designee shall assess a fine with a citation in an
- 3981 amount that is no more than:
- 3982 (a) for a first offense, \$1,000;
- 3983 (b) for a second offense, \$2,000; and
- 3984 (c) for each offense subsequent to a second offense, \$2,000 for each day of continued
- 3985 offense.
- 3986 (11) (a) An action for a first or second offense for which the division has not issued a
- 3987 final order does not preclude the division from initiating a subsequent action for a second or
- 3988 subsequent offense while the preceding action is pending.
- 3989 (b) The final order on a subsequent action is considered a second or subsequent
- 3990 offense, respectively, provided the preceding action resulted in a first or second offense,
- 3991 respectively.
- 3992 (12) (a) If a person does not pay a penalty, the director may collect the unpaid penalty
- 3993 by:

3994 (i) referring the matter to a collection agency; or
3995 (ii) bringing ~~[an action in the district court of the county: (A) where the person resides;~~
3996 ~~or (B) where the office of the director is located]~~ an action in a court with jurisdiction under
3997 Title 78A, Judiciary and Judicial Administration.

3998 (b) A county attorney or the attorney general of the state shall provide legal services to
3999 the director in an action to collect the penalty.

4000 (c) A court may award reasonable attorney fees and costs to the division in an action
4001 the division brings to enforce the provisions of this section.

4002 Section 93. Section **61-2c-403** is amended to read:

4003 **61-2c-403. Cease and desist orders.**

4004 (1) (a) The director may issue and serve by certified mail, or by personal service, on a
4005 person an order to cease and desist from an act if:

4006 (i) the director has reason to believe that the person has been engaged, is engaging in,
4007 or is about to engage in the act constituting a violation of this chapter; and

4008 (ii) it appears to the director that it would be in the public interest to stop the act.

4009 (b) Within 10 days after service of the order, the party named in the order may request
4010 a hearing to be held in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

4011 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall
4012 remain in effect.

4013 (2) (a) After the hearing described in Subsection (1), if the director finds that an act of
4014 the person violates this chapter, the director:

4015 (i) shall issue an order making the cease and desist order permanent; and

4016 (ii) may impose another disciplinary action under Section [61-2c-402](#).

4017 (b) ~~[(i)]~~ The director may ~~[file suit]~~ bring an action in a court with jurisdiction under
4018 Title 78A, Judiciary and Judicial Administration, in the name of the division to enjoin and
4019 restrain a person on whom an order is served under this section from violating this chapter if:

4020 ~~[(A)]~~ (i) ~~[(i)]~~ (A) the person does not request a hearing under Subsection (1); or

4021 ~~[(B)]~~ (B) a permanent cease and desist order is issued against the person following a
4022 hearing or stipulation; and

4023 ~~[(B)]~~ (ii) ~~[(i)]~~ (A) the person fails to cease the act; or

4024 ~~[(B)]~~ (B) after discontinuing the act, the person again commences the act.

4025 ~~[(ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the~~
4026 ~~county:]~~

4027 ~~[(A) in which the act occurs;]~~

4028 ~~[(B) where the individual resides; or]~~

4029 ~~[(C) where the individual or entity carries on business.]~~

4030 (3) The cease and desist order issued under this section may not interfere with or
4031 prevent the prosecution of a remedy or action enforcement under this chapter.

4032 (4) An individual who violates a cease and desist order issued under this section is
4033 guilty of a class A misdemeanor.

4034 Section 94. Section **61-2f-403** is amended to read:

4035 **61-2f-403. Mishandling of trust money.**

4036 (1) The division may audit principal brokers' trust accounts or other accounts in which
4037 a licensee maintains trust money under this chapter. If the division's audit shows, in the
4038 opinion of the division, gross mismanagement, commingling, or misuse of money, the division,
4039 with the concurrence of the commission, may order at the division's expense a complete audit
4040 of the account by a certified public accountant, or take other action in accordance with Section
4041 **61-2f-404**.

4042 (2) If the commission finds under Subsection (1) that gross mismanagement,
4043 comingling, or misuse of money occurred, the commission, with concurrence of the division,
4044 may then order the licensee to reimburse the division for the cost of the audit described in
4045 Subsection (1).

4046 (3) The licensee may obtain agency review by the executive director or judicial review
4047 of any division order.

4048 (4) (a) If it appears that a person has grossly mismanaged, commingled, or otherwise
4049 misused trust money, the division, with or without prior administrative proceedings, may bring
4050 an action~~[: (i) in the district court of the district where: (A) the person resides; (B) the person~~
4051 ~~maintains a place of business; or (C) the act or practice occurred or is about to occur; and (ii)]~~
4052 in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enjoin
4053 the act or practice and to enforce compliance with this chapter or any rule or order under this
4054 chapter.

4055 (b) Upon a proper showing, a court shall grant injunctive relief or a temporary

4056 restraining order, and may appoint a receiver or conservator. The division is not required to
4057 post a bond in any court proceeding.

4058 Section 95. Section ~~61-2f-407~~ is amended to read:

4059 **61-2f-407. Remedies and action for violations.**

4060 (1) (a) The director shall issue and serve upon a person an order directing that person to
4061 cease and desist from an act if:

4062 (i) the director has reason to believe that the person has been engaging, is about to
4063 engage, or is engaging in the act constituting a violation of this chapter; and

4064 (ii) it appears to the director that it would be in the public interest to stop the act.

4065 (b) Within 10 days after the day on which the order is served, the person upon whom
4066 the order is served may request a hearing.

4067 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall
4068 remain in effect.

4069 (d) If a request for a hearing is made, the division shall follow the procedures and
4070 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

4071 (2) (a) After a hearing requested under Subsection (1), if the commission and the
4072 director agree that an act of the person violates this chapter, the director:

4073 (i) shall issue an order making the order issued under Subsection (1) permanent; and

4074 (ii) may impose another disciplinary action under Section ~~61-2f-404~~.

4075 (b) The director shall ~~[file suit]~~ bring an action in a court with jurisdiction under Title
4076 78A, Judiciary and Judicial Administration, in the name of the Department of Commerce and
4077 the Division of Real Estate~~[- in the district court in the county in which an act described in~~
4078 ~~Subsection (1) occurs or where the person resides or carries on business;]~~ to enjoin and restrain
4079 the person from violating this chapter if:

4080 (i) (A) a hearing is not requested under Subsection (1); and

4081 (B) the person fails to cease the act described in Subsection (1); or

4082 (ii) after discontinuing the act described in Subsection (1), the person again
4083 commences the act.

4084 ~~[(c) A district court of this state has jurisdiction of an action brought under this~~
4085 ~~section.]~~

4086 ~~[(d)]~~ (c) Upon a proper showing in an action brought under this section or upon a

4087 conviction under Section 76-6-1203, the court may:

- 4088 (i) issue a permanent or temporary, prohibitory or mandatory injunction;
- 4089 (ii) issue a restraining order or writ of mandamus;
- 4090 (iii) enter a declaratory judgment;
- 4091 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
- 4092 (v) order disgorgement;
- 4093 (vi) order rescission;
- 4094 (vii) impose a civil penalty not to exceed the greater of:
- 4095 (A) \$5,000 for each violation; or
- 4096 (B) the amount of any gain or economic benefit derived from a violation; and
- 4097 (viii) enter any other relief the court considers just.

4098 [~~(e)~~] (d) The court may not require the division to post a bond in an action brought
4099 under this Subsection (2).

4100 (3) A license, certificate, or registration issued by the division to any person convicted
4101 of a violation of Section 76-6-1203 is automatically revoked.

4102 (4) A remedy or action provided in this section does not limit, interfere with, or prevent
4103 the prosecution of another remedy or action, including a criminal proceeding.

4104 Section 96. Section 61-2g-501 is amended to read:

4105 **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

4106 (1) (a) The division may conduct a public or private investigation of the actions of:

- 4107 (i) a person registered, licensed, or certified under this chapter;
- 4108 (ii) an applicant for registration, licensure, or certification;
- 4109 (iii) an applicant for renewal of registration, licensure, or certification; or
- 4110 (iv) a person required to be registered, licensed, or certified under this chapter.

4111 (b) The division may initiate an agency action against a person described in Subsection
4112 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

- 4113 (i) impose disciplinary action;
- 4114 (ii) deny issuance to an applicant of:
 - 4115 (A) an original registration, license, or certification; or
 - 4116 (B) a renewal of a registration, license, or certification; or
- 4117 (iii) issue a cease and desist order as provided in Subsection (3).

- 4118 (2) (a) The division may:
- 4119 (i) administer an oath or affirmation;
- 4120 (ii) issue a subpoena that requires:
- 4121 (A) the attendance and testimony of a witness; or
- 4122 (B) the production of evidence;
- 4123 (iii) take evidence; and
- 4124 (iv) require the production of a book, paper, contract, record, document, information,
- 4125 or evidence relevant to the investigation described in Subsection (1).
- 4126 (b) The division may serve a subpoena by certified mail.
- 4127 (c) A failure to respond to a request by the division in an investigation authorized
- 4128 under this chapter within 10 days after the day on which the request is served is considered to
- 4129 be a separate violation of this chapter, including:
- 4130 (i) failing to respond to a subpoena as a witness;
- 4131 (ii) withholding evidence; or
- 4132 (iii) failing to produce a book, paper, contract, document, information, or record.
- 4133 (d) (i) A court of competent jurisdiction shall enforce, according to the practice and
- 4134 procedure of the court, a subpoena issued by the division.
- 4135 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
- 4136 required by the service statutes of the state where the witness or evidence is located.
- 4137 (e) (i) If a person is found to have violated this chapter or a rule made under this
- 4138 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
- 4139 document, information, or record required under this chapter, including the costs incurred to
- 4140 copy an electronic book, paper, contract, document, information, or record in a universally
- 4141 readable format.
- 4142 (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the
- 4143 person's license, certification, or registration is automatically suspended:
- 4144 (A) beginning the day on which the payment of costs is due; and
- 4145 (B) ending the day on which the costs are paid.
- 4146 (3) (a) The director shall issue and serve upon a person an order directing that person to
- 4147 cease and desist from an act if:
- 4148 (i) the director has reason to believe that the person has been engaging, is about to

4149 engage, or is engaging in the act constituting a violation of this chapter; and

4150 (ii) it appears to the director that it would be in the public interest to stop the act.

4151 (b) Within 10 days after the day on which the order is served, the person upon whom
4152 the order is served may request a hearing.

4153 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
4154 remain in effect.

4155 (d) If a request for hearing is made, the division shall follow the procedures and
4156 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

4157 (4) (a) After a hearing requested under Subsection (3), if the board and division concur
4158 that an act of the person violates this chapter, the board, with the concurrence of the division:

4159 (i) shall issue an order making the cease and desist order permanent; and

4160 (ii) may impose another disciplinary action under Section [61-2g-502](#).

4161 (b) The director shall [~~commence an action~~] bring an action in a court with jurisdiction
4162 under Title 78A, Judiciary and Judicial Administration, in the name of the Department of

4163 Commerce and Division of Real Estate[~~, in the district court in the county in which an act~~
4164 ~~described in Subsection (3) occurs or where the individual resides or carries on business,]~~ to

4165 enjoin and restrain the individual from violating this chapter if:

4166 (i) (A) a hearing is not requested under Subsection (3); and

4167 (B) the individual fails to cease the act described in Subsection (3); or

4168 (ii) after discontinuing the act described in Subsection (3), the individual again
4169 commences the act.

4170 (5) A remedy or action provided in this section does not limit, interfere with, or prevent
4171 the prosecution of another remedy or action, including a criminal proceeding.

4172 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a
4173 disciplinary action under this chapter no later than the earlier of the following:

4174 (i) four years after the day on which the violation is reported to the division; or

4175 (ii) 10 years after the day on which the violation occurred.

4176 (b) The division may commence a disciplinary action under this chapter after the time
4177 period described in Subsection (6)(a) expires if:

4178 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
4179 settlement; and

4180 (B) the division initiates the disciplinary action no later than one year after the day on
4181 which the judgment is issued or the settlement is final; or

4182 (ii) the division and the individual subject to a disciplinary action enter into a written
4183 stipulation to extend the time period described in Subsection (6)(a).

4184 Section 97. Section **70-3a-309** is amended to read:

4185 **70-3a-309. Cybersquatting.**

4186 (1) (a) A person is liable in a civil action by the owner of a mark, including a personal
4187 name, which is a mark for purposes of this section, if, without regard to the goods or services
4188 of the person or the mark's owner, the person:

4189 (i) has a bad faith intent to profit from the mark, including a personal name; and

4190 (ii) for any length of time registers, acquires, traffics in, or uses a domain name in, or
4191 belonging to any person in, this state that:

4192 (A) in the case of a mark that is distinctive at the time of registration of the domain
4193 name, is identical or confusingly similar to the mark;

4194 (B) in the case of a famous mark that is famous at the time of registration of the
4195 domain name, is identical or confusingly similar to or dilutive of the mark; or

4196 (C) is a trademark, word, or name protected by reason of 18 U.S.C. Sec. 706 or 36
4197 U.S.C. Sec. 220506.

4198 (b) (i) In determining whether a person has a bad faith intent described in Subsection
4199 (1)(a), a court may consider all relevant factors, including:

4200 (A) the trademark or other intellectual property rights of the person, if any, in the
4201 domain name;

4202 (B) the extent to which the domain name consists of the legal name of the person or a
4203 name that is otherwise commonly used to identify that person;

4204 (C) the person's prior use, if any, of the domain name in connection with the bona fide
4205 offering of any goods or services;

4206 (D) the person's bona fide noncommercial or fair use of the mark in a site accessible
4207 under the domain name;

4208 (E) the person's intent to divert consumers from the mark owner's online location to a
4209 site accessible under the domain name that could harm the goodwill represented by the mark,
4210 either for commercial gain or with the intent to tarnish or disparage the mark, by creating a

4211 likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

4212 (F) the person's offer to transfer, sell, or otherwise assign, or solicitation of the
4213 purchase, transfer, or assignment of the domain name to the mark owner or any third party for
4214 financial gain without having used, or having an intent to use, the domain name in the bona
4215 fide offering of any goods or services, or the person's prior conduct indicating a pattern of such
4216 conduct;

4217 (G) the person's provision of material and misleading false contact information when
4218 applying for the registration of the domain name, the person's intentional failure to maintain
4219 accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

4220 (H) the person's registration or acquisition of multiple domain names that the person
4221 knows are identical or confusingly similar to another's mark that is distinctive at the time of
4222 registration of the domain names, or is dilutive of another's famous mark that is famous at the
4223 time of registration of the domain names, without regard to the goods or services of the person
4224 or the mark owner; and

4225 (I) the extent to which the mark incorporated in the person's domain name registration
4226 is or is not distinctive and famous.

4227 (ii) Bad faith intent described in Subsection (1)(a) may not be found in any case in
4228 which the court determines that the person believed and had reasonable grounds to believe that
4229 the use of the domain name was a fair use or otherwise lawful.

4230 (c) In a civil action involving the registration, trafficking, or use of a domain name
4231 under this section, a court may order the forfeiture or cancellation of the domain name or the
4232 transfer of the domain name to the owner of the mark.

4233 (d) (i) A person is liable for using a domain name under Subsection (1)(a) only if that
4234 person is the domain name registrant or that registrant's authorized licensee, affiliate, domain
4235 name registrar, domain name registry, or other domain name registration authority that
4236 knowingly assists a violation of this chapter by the registrant.

4237 (ii) A person may not be held liable under this section absent a showing of bad faith
4238 intent to profit from the registration or maintenance of the domain name.

4239 (iii) For purposes of this section, a "showing of bad faith intent to profit" shall be
4240 interpreted in the same manner as under 15 U.S.C. Sec. 1114(2)(D)(iii).

4241 (e) As used in this section, the term "traffics in" refers to transactions that include

4242 sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for
4243 consideration or receipt in exchange for consideration.

4244 (2) (a) The owner of a mark registered with the U.S. Patent and Trademark Office or
4245 under this chapter may [~~file an in rem civil action~~] bring an in rem civil action in a court with
4246 jurisdiction under Title 78A, Judiciary and Judicial Administration, against a domain name [~~in~~
4247 ~~the district court~~] if the owner is located in the state and if:

4248 (i) the domain name violates any right of the owner of a mark registered in the Patent
4249 and Trademark Office or registered under this chapter; and

4250 (ii) the court finds that the owner:

4251 (A) is not able to obtain personal jurisdiction over a person who would be a defendant
4252 in a civil action under Subsection (1); or

4253 (B) through due diligence was not able to find a person who would be a defendant in a
4254 civil action under Subsection (1) by:

4255 (I) sending a notice of the alleged violation and intent to proceed under this Subsection
4256 (2)(a) to the registrant of the domain name at the postal and e-mail address provided by the
4257 registrant to the registrar; and

4258 (II) publishing notice of the action as the court may direct promptly after filing the
4259 action.

4260 (b) Completion of the actions required by Subsection (2)(a)(ii) constitutes service of
4261 process.

4262 (c) In an in rem action under this Subsection (2), a domain name is considered to be
4263 located in the judicial district in which:

4264 (i) the domain name registrar, registry, or other domain name authority that registered
4265 or assigned the domain name is located; or

4266 (ii) documents sufficient to establish control and authority regarding the disposition of
4267 the registration and use of the domain name are deposited with the court.

4268 (d) (i) The remedies in an in rem action under this Subsection (2) are limited to a court
4269 order for the forfeiture or cancellation of the domain name or the transfer of the domain name
4270 to the owner of the mark.

4271 (ii) Upon receipt of written notification of a filed, stamped copy of a complaint filed by
4272 the owner of a mark in the [~~district~~] court under this Subsection (2), the domain name registrar,

4273 domain name registry, or other domain name authority shall:

4274 (A) expeditiously deposit with the court documents sufficient to establish the court's
4275 control and authority regarding the disposition of the registration and use of the domain name
4276 to the court; and

4277 (B) not transfer, suspend, or otherwise modify the domain name during the pendency
4278 of the action, except upon order of the court.

4279 (iii) The domain name registrar or registry or other domain name authority is not liable
4280 for injunctive or monetary relief under this section, except in the case of bad faith or reckless
4281 disregard, which includes a willful failure to comply with a court order.

4282 (3) The civil actions and remedies established by Subsection (1) and the in rem action
4283 established in Subsection (2) do not preclude any other applicable civil action or remedy.

4284 (4) The in rem jurisdiction established under Subsection (2) does not preclude any
4285 other jurisdiction, whether in rem or personal.

4286 Section 98. Section **70-3a-402** is amended to read:

4287 **70-3a-402. Infringement.**

4288 (1) Subject to Section **70-3a-104** and Subsection (2), any person is liable in a civil
4289 action brought by the registrant for any and all of the remedies provided in Section **70-3a-404**,
4290 if that person:

4291 (a) uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered
4292 under this chapter:

4293 (i) without the consent of the registrant; and

4294 (ii) in connection with the sale, distribution, offering for sale, or advertising of any
4295 goods or services on or in connection with which that use is likely to cause confusion, mistake,
4296 or to deceive as to the source of origin, nature, or quality of those goods or services; or

4297 (b) reproduces, counterfeits, copies, or colorably imitates any mark and applies the
4298 reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages,
4299 wrappers, receptacles, or advertisements intended to be used upon or in connection with the
4300 sale or other distribution in this state of goods or services.

4301 (2) Under Subsection (1)(b), the registrant is not entitled to recover profits or damages
4302 unless the act described in Subsection (1)(b) has been committed with the intent:

4303 (a) to cause confusion or mistake; or

4304 (b) to deceive.

4305 (3) In a civil action for a violation of Section 70-3a-309:

4306 (a) the plaintiff may recover court costs and reasonable attorney fees; and

4307 (b) the plaintiff may elect, at any time before final judgment is entered by the [district]
4308 court, to recover, instead of actual damages and profits, an award of statutory damages in the
4309 amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court
4310 considers just.

4311 (4) Statutory damages awarded under Subsection (3)(b) are presumed to be \$100,000
4312 per domain name if there is a pattern and practice of infringements committed willfully for
4313 commercial gain.

4314 Section 99. Section 70-3a-405 is amended to read:

4315 **70-3a-405. Forum for actions regarding registration -- Service on out-of-state**
4316 **registrants.**

4317 (1) (a) ~~[An action to require the cancellation of a mark registered under this chapter~~
4318 ~~shall be brought in a district court of this state.]~~ A person may bring an action in a court with
4319 jurisdiction under Title 78A, Judiciary and Judicial Administration, to require the cancellation
4320 of a mark registered under this chapter.

4321 (b) The division may not be made a party to an action filed under Subsection (1)(a),
4322 except that the division may intervene in an action filed under Subsection (1)(a).

4323 (2) In any action brought against a nonresident registrant, service may be effected upon
4324 the nonresident registrant in accordance with the procedures established for service upon
4325 nonresident corporations and business entities under Section 16-10a-1511.

4326 Section 100. Section 70A-8-409.1 is amended to read:

4327 **70A-8-409.1. Replacement of lost, destroyed, or wrongfully taken share**
4328 **certificate of a land company or a water company.**

4329 (1) ~~[For purposes of]~~ As used in this section:

4330 (a) "Affected share" means the share represented by a share certificate that is lost,
4331 destroyed, or wrongfully taken.

4332 (b) "Company" means a land company or a water company.

4333 (c) "Distribution area" means:

4334 (i) for a water company, the geographic area where the water company distributes

4335 water; or

4336 (ii) for a land company, the geographic area owned by the land company.

4337 (d) "Original share certificate" means a share certificate that is alleged to be lost,
4338 destroyed, or wrongfully taken.

4339 (e) "Person" means:

4340 (i) an individual;

4341 (ii) a corporation;

4342 (iii) a business entity;

4343 (iv) a political subdivision of the state, including a municipality;

4344 (v) an agency of the state; or

4345 (vi) an agency of the federal government.

4346 (f) "Replacement share certificate" means a share certificate issued to replace a share
4347 certificate that is lost, destroyed, or wrongfully taken.

4348 (g) "Share certificate" means a certificated share of stock in a company.

4349 (2) (a) This section applies to the replacement of a lost, destroyed, or wrongfully taken
4350 share certificate.

4351 (b) Unless the articles of incorporation or bylaws of a company address the
4352 replacement of a lost, destroyed, or wrongfully taken share certificate, this section governs the
4353 replacement of a lost, destroyed, or wrongfully taken share certificate.

4354 (3) A company shall issue a replacement share certificate to a person claiming to be the
4355 owner of a share certificate that is lost, destroyed, or wrongfully taken, and cancel the original
4356 share certificate on the records of the company, if:

4357 (a) the person represents to the company that the original share certificate is lost,
4358 destroyed, or wrongfully taken;

4359 (b) (i) (A) the person is the registered owner of the affected share; and

4360 (B) before the company receives notice that the share certificate has been acquired by a
4361 protected purchaser, the person requests that a replacement share certificate be issued; or

4362 (ii) (A) the person is not the registered owner of the affected share; and

4363 (B) the person establishes ownership of the affected share, including by presenting to
4364 the company written documentation that demonstrates to the reasonable satisfaction of the
4365 company that the person is the rightful owner of the affected share through purchase, gift,

4366 inheritance, foreclosure, bankruptcy, or reorganization;

4367 (c) the assessments to which the affected share is subject are paid current;

4368 (d) except as provided in Subsection (5), the person files with the company a sufficient
4369 indemnity bond or other security acceptable to the company; and

4370 (e) the person satisfies any other reasonable requirement imposed by the company,
4371 including the payment of a reasonable transfer fee.

4372 (4) (a) If after a replacement share certificate is issued a protected purchaser of the
4373 original share certificate presents the original share certificate for registration of transfer, the
4374 company shall register the transfer unless an overissue would result.

4375 (b) If an overissue would result when there is a registration of transfer of an original
4376 share certificate, a company may recover the replacement share certificate from the person to
4377 whom it is issued, or any person taking under that person, except a protected purchaser.

4378 (c) If a company elects to follow the procedures of Subsection (5), to assert an
4379 ownership interest in the affected share, a protected purchaser shall file a written notice of
4380 objection within the 60-day period described in Subsection (5)(d). A protected purchaser's
4381 failure to file a written notice of objection within the 60-day period eliminates any claim of the
4382 protected purchaser.

4383 (5) As an alternative to requiring an indemnity bond or other acceptable security under
4384 Subsection (3)(d), a company is considered to have followed a fair and reasonable procedure
4385 without the necessity of a written policy or bylaw otherwise required by Section 16-6a-609, if
4386 the company follows the following procedure:

4387 (a) The company shall publish written notice at least once a week for three consecutive
4388 weeks:

4389 (i) (A) in a newspaper of general circulation in the area that reasonably includes the
4390 distribution area of the company; and

4391 (B) as required in Section 45-1-101;

4392 (ii) with at least seven days between each publication date under Subsection
4393 (5)(a)(i)(A); and

4394 (iii) beginning no later than 20 days after submission of the request to issue the
4395 replacement share certificate.

4396 (b) The company shall post written notice in at least three conspicuous places within

4397 the distribution area of the company.

4398 (c) No later than 20 days after the day on which the company receives a request to issue
4399 a replacement share certificate, the company shall mail written notice:

4400 (i) to the last known address of the owner of the affected share shown on the records of
4401 the company;

4402 (ii) if a company maintains a record of who pays annual assessments, to any person
4403 who, within the five-year period immediately preceding the day the written notice is mailed,
4404 pays an assessment levied against the affected share; and

4405 (iii) to any person that has notified the company in writing of an interest in the affected
4406 share, including a financial institution.

4407 (d) A notice required under Subsections (5)(a) through (c) shall:

4408 (i) identify the person who is requesting that a replacement share certificate be issued;

4409 (ii) state that an interested person may file a written notice of objection with the
4410 company; and

4411 (iii) state that unless a written notice of objection to the issuance of a replacement share
4412 certificate is filed within 60 days after the last day of publication under Subsection (5)(a)(i)(A),
4413 including a written notice of objection from a protected purchaser:

4414 (A) a replacement share certificate will be issued to the person requesting that the
4415 replacement share certificate be issued; and

4416 (B) the original share certificate will be permanently canceled on the records of the
4417 company.

4418 (e) A notice of objection under Subsection (5)(d) shall:

4419 (i) state the basis for objecting to the claim of ownership of the affected share;

4420 (ii) identify a person that the objecting person believes has a stronger claim of
4421 ownership to the affected share; and

4422 (iii) be accompanied by written evidence that reasonably documents the basis of the
4423 objection to the claim of ownership.

4424 (f) If the company receives a notice of objection within the 60-day period described in
4425 Subsection (5)(d), the company may review the disputed claim and:

4426 (i) deny in writing the objection to the claim of ownership and issue a replacement
4427 share certificate to the person requesting the replacement share certificate;

4428 (ii) accept in writing a claim of ownership asserted by a notice of objection and issue a
4429 replacement share certificate to the person the objecting person asserts owns the affected share;

4430 (iii) file an interpleader action in accordance with Utah Rules of Civil Procedure, Rule
4431 22, joining the persons claiming an interest in the affected share and depositing a replacement
4432 share certificate with the court; or

4433 (iv) require the persons claiming an interest in the affected share to resolve the
4434 ownership dispute.

4435 (g) Upon receipt, the company shall act in accordance with:

4436 (i) a written agreement acceptable to the company among the persons who claim
4437 interest in the affected share; or

4438 (ii) a court order declaring ownership in the affected share.

4439 (h) The following are entitled to receive from a nonprevailing person the costs for
4440 resolution of a dispute under this Subsection (5), including reasonable attorney fees when
4441 attorney fees are necessary:

4442 (i) a prevailing person; and

4443 (ii) the company, if the company acts in good faith.

4444 (i) The person requesting that a replacement share certificate be issued shall reimburse
4445 the company for the costs reasonably incurred by the company under this Subsection (5) that
4446 are not paid under this Subsection (5)(i) including:

4447 (i) legal and other professional fees; and

4448 (ii) costs incurred by the company in response to a notice of objection.

4449 (j) A company shall comply with this Subsection (5) before issuance of a replacement
4450 share certificate:

4451 (i) upon request from the person requesting a replacement share certificate be issued;
4452 and

4453 (ii) if the person requesting the replacement share certificate provides indemnification
4454 satisfactory to the company against liability and costs of proceeding under this Subsection (5).

4455 (k) A determination made under this Subsection (5) is considered to be a final and
4456 conclusive determination of ownership of a disputed replacement share certificate.

4457 (6) (a) A company shall:

4458 (i) make a decision to approve or deny the issuance of a replacement share certificate in

4459 writing; and

4460 (ii) deliver the written decision to:

4461 (A) the person requesting a replacement share certificate be issued;

4462 (B) a person who files a notice of objection under Subsection (5); and

4463 (C) any other person the company determines is involved in the request for a
4464 replacement share certificate.

4465 (b) A person may bring an action in a court with jurisdiction under Title 78A, Judiciary
4466 and Judicial Administration, against a company for judicial review of a decision by the
4467 company under Subsection (6)(a).

4468 ~~[(b) A decision of a company described in Subsection (6)(a) is subject to de novo~~
4469 ~~judicial review in the district court in which the company has its principal place of business.]~~

4470 (c) (i) A person may not seek judicial review under Subsection (6)(b) more than 30
4471 days after the day on which the written decision is delivered under Subsection (6)(a).

4472 (ii) If no action for judicial review is filed within the 30-day period, absent fraud, the
4473 issuance of a replacement share certificate or the decision to not issue a replacement share
4474 certificate is final and conclusive evidence of ownership of the affected share.

4475 (d) (i) In a judicial action brought under this Subsection (6), the prevailing person as
4476 determined by court order, is entitled to payment by a nonprevailing person of:

4477 (A) the costs of successfully defending its ownership claim; and

4478 (B) reasonable attorney fees.

4479 (ii) Notwithstanding Subsection (6)(d)(i), an award of costs or attorney fees may not be
4480 granted against a company if the company acts in good faith.

4481 Section 101. Section **70A-9a-513.5** is amended to read:

4482 **70A-9a-513.5. Termination of wrongfully filed financing statement --**

4483 **Reinstatement.**

4484 (1) As used in this section:

4485 (a) "Established filer" means a person that:

4486 (i) regularly causes records to be communicated to the filing office for filing and has
4487 provided the filing office with current contact information and information sufficient to
4488 establish its identity; or

4489 (ii) satisfies either of the following conditions:

4490 (A) the filing office has issued the person credentials for access to online filing
4491 services; or

4492 (B) the person has established an account for payment of filing fees, regardless of
4493 whether the account is used in a particular transaction.

4494 (b) "Filing office" means the same as that term is defined in Section 70A-9a-102,
4495 except that it does not include a county recorder office.

4496 (2) A person identified as debtor in a filed financing statement may deliver to the filing
4497 office the debtor's notarized affidavit, signed under penalty of perjury, that identifies the
4498 financing statement by file number, indicates the affiant's mailing address, and states that the
4499 affiant believes that the filed record identifying the affiant as debtor was not authorized and
4500 was caused to be communicated to the filing office with the intent to harass or defraud the
4501 affiant. The filing office shall adopt a form of affidavit for use under this section. The filing
4502 office may reject an affidavit described in this Subsection (2) if:

4503 (a) the affidavit is incomplete; or

4504 (b) the filing office reasonably believes that the affidavit was communicated to the
4505 filing office with the intent to harass or defraud, or for any other unlawful purpose.

4506 (3) Subject to Subsection (10), if an affidavit is delivered to the filing office under
4507 Subsection (2), the filing office shall promptly file a termination statement with respect to the
4508 financing statement identified in the affidavit. The termination statement must identify by its
4509 file number the initial financing statement to which it relates and must indicate that it was filed
4510 pursuant to this section. A termination statement filed under this Subsection (3) is not effective
4511 until 14 days after it is filed.

4512 (4) The filing office may not charge a fee for the filing of an affidavit under Subsection
4513 (2) or a termination statement under Subsection (3). The filing office may not return any fee
4514 paid for filing the financing statement identified in the affidavit, whether or not the financing
4515 statement is reinstated under Subsection (7).

4516 (5) On the same day that a filing office files a termination statement under Subsection
4517 (3), it shall send to the secured party of record for the financing statement to which the
4518 termination statement relates a notice stating that the termination statement has been filed and
4519 will become effective 14 days after filing. The notice shall be sent by mail to the address
4520 provided for the secured party of record in the financing statement or by electronic mail to the

4521 electronic mail address provided by the secured party of record, if any.

4522 (6) (a) A secured party that believes in good faith that the filed record identified in an
4523 affidavit delivered to the filing office under Subsection (2) was authorized and was not caused
4524 to be communicated to the filing office with the intent to harass or defraud the affiant may:

4525 (i) before the termination statement takes effect under Subsection (3), request the filing
4526 office to review the filed record concerning whether the filed record was filed with the intent to
4527 harass or defraud; or

4528 (ii) regardless of whether the affiant seeks a review under Subsection (6)(a)(i), file an
4529 action against the filing office seeking reinstatement of the financing statement to which the
4530 filed record relates.

4531 (b) Within 10 days after being served with process in an action under this Subsection
4532 (6), the filing office shall file a notice indicating that the action has been commenced. The
4533 notice shall indicate the file number of the initial financing statement to which it relates.

4534 (c) If the affiant is not named as a defendant in the action described in Subsection
4535 (6)(a)(ii), the secured party shall send a copy of the complaint to the affiant at the address
4536 indicated in the affidavit. [~~The exclusive venue for the action shall be in the Third District~~
4537 ~~Court.~~] A party may petition the court to consider the matter on an expedited basis.

4538 (d) An action under this Subsection (6) must be filed before the expiration of six
4539 months after the date on which the termination statement filed under Subsection (3) becomes
4540 effective.

4541 (7) If, in an action under Subsection (6), the court determines that the financing
4542 statement should be reinstated, the filing office shall promptly file a record that identifies by its
4543 file number the initial financing statement to which the record relates and indicates that the
4544 financing statement has been reinstated.

4545 (8) Upon the filing of a record reinstating a financing statement under Subsection (7),
4546 the effectiveness of the financing statement is reinstated and the financing statement shall be
4547 considered never to have been terminated under this section. A continuation statement filed as
4548 provided in Subsection 70A-9a-515(4) after the effective date of a termination statement filed
4549 under Subsection (3) or (10) becomes effective if the financing statement is reinstated.

4550 (9) If, in an action under Subsection (6), the court determines that the filed record
4551 identified in an affidavit delivered to the filing office under Subsection (2) was unauthorized

4552 and was caused to be communicated to the filing office with the intent to harass or defraud the
4553 affiant, the filing office and the affiant may recover from the secured party that filed the action
4554 the costs and expenses, including reasonable attorney fees, that the filing office and the affiant
4555 incurred in the action. This recovery is in addition to any recovery to which the affiant is
4556 entitled under Section [70A-9a-625](#).

4557 (10) If an affidavit delivered to a filing office under Subsection (2) relates to a filed
4558 record communicated to the filing office by an established filer, the filing office shall promptly
4559 send to the secured party of record a notice stating that the affidavit has been delivered to the
4560 filing office and that the filing office is conducting an administrative review to determine
4561 whether the record was unauthorized and was caused to be communicated with the intent to
4562 harass or defraud the affiant. The notice shall be sent by mail to the address provided for the
4563 secured party in the financing statement or sent by electronic mail to the electronic mail address
4564 provided by the secured party of record, if any, and a copy shall be sent in the same manner to
4565 the affiant. The administrative review shall be conducted on an expedited basis and the filing
4566 office may require the affiant and the secured party of record to provide any additional
4567 information that the filing office considers appropriate. If the filing office concludes that the
4568 record was not authorized and was caused to be communicated with the intent to harass or
4569 defraud the affiant, the filing office shall promptly file a termination statement under
4570 Subsection (3) that will be effective immediately and send to the secured party of record the
4571 notice required by Subsection (5). The secured party may thereafter file an action for
4572 reinstatement under Subsection (6), and Subsections (7) through (9) are applicable.

4573 Section 102. Section **78A-6-350** is amended to read:

4574 **78A-6-350. Venue -- Dismissal without adjudication on merits.**

4575 (1) Notwithstanding [~~Title 78B, Chapter 3, Part 3, Place of Trial -- Venue~~] Title 78B,
4576 Chapter 3a, Venue for Civil Actions, a proceeding for a minor's case in the juvenile court shall
4577 be commenced in the court of the district in which:

4578 (a) for a proceeding under Title 80, Chapter 6, Juvenile Justice:

4579 (i) the minor is living or found; or

4580 (ii) the alleged offense occurred; or

4581 (b) for all other proceedings, the minor is living or found.

4582 (2) If a party seeks to transfer a case to another district after a petition has been filed in

4583 the juvenile court, the juvenile court may transfer the case in accordance with the Utah Rules of
4584 Juvenile Procedure.

4585 (3) The dismissal of a petition in one district where the dismissal is without prejudice
4586 and where there has been no adjudication upon the merits may not preclude refile within the
4587 same district or another district where there is venue for the case.

4588 Section 103. Section **78B-1-132** is amended to read:

4589 **78B-1-132. Employer not to discharge or threaten employee for responding to**
4590 **subpoena -- Criminal penalty -- Civil action by employee.**

4591 (1) An employer may not deprive an employee of employment or threaten or otherwise
4592 coerce the employee regarding employment because the employee attends a deposition or
4593 hearing in response to a subpoena.

4594 (2) Any employer who violates this section is guilty of criminal contempt and upon
4595 conviction may be fined not more than \$500 or imprisoned not more than six months or both.

4596 (3) (a) If an employer violates this section, in addition to any other remedy, the
4597 employee may bring [~~a civil action in district court~~] an action in a court with jurisdiction under
4598 Title 78A, Judiciary and Judicial Administration, for recovery of wages lost as a result of the
4599 violation and for an order requiring the reinstatement of the employee.

4600 (b) Damages recoverable may not exceed lost wages for six weeks.

4601 (c) If the employee prevails, the employee shall be allowed reasonable attorney fees.

4602 Section 104. Section **78B-3a-101** is enacted to read:

4603 **CHAPTER 3a. VENUE FOR CIVIL ACTIONS**

4604 **Part 1. General Provisions**

4605 **78B-3a-101. Definitions.**

4606 As used in this chapter:

4607 (1) (a) "Action" means a lawsuit or case that is commenced in a court.

4608 (b) "Action" does not include a criminal action as defined in Section [77-1-3](#).

4609 (2) "Business organization" means:

4610 (a) an association;

4611 (b) a corporation;

4612 (c) an institution, as that term is defined in Section [7-1-103](#);

4613 (d) a joint stock company;

- 4614 (e) a joint venture;
- 4615 (f) a limited liability company;
- 4616 (g) a mutual fund trust;
- 4617 (h) a partnership; or
- 4618 (i) any other similar form of organization described in Subsections (2)(a) through (g).

4619 (3) "Cause of action" means the act or omission giving rise to the action.

4620 (4) "Principal place of business" means the place where the business organization's
4621 officers direct, control, and coordinate the business organization's activities regardless of
4622 whether the place is located in this state.

4623 (5) "Registered office" means the place within this state that the business organization
4624 designated as the business organization's registered office in the most recent document on file
4625 with the Division of Corporations and Commercial Code.

4626 Section 105. Section **78B-3a-102** is enacted to read:

4627 **78B-3a-102. Applicability of this chapter -- Venue for the Business and Chancery**
4628 **Court.**

4629 (1) Except as otherwise provided by another provision of the Utah Code, a plaintiff
4630 shall bring an action in accordance with the requirements of this chapter.

4631 (2) The requirements of this chapter do not apply to an action brought in the Business
4632 and Chancery Court.

4633 Section 106. Section **78B-3a-103** is enacted to read:

4634 **78B-3a-103. Transfer of venue.**

4635 (1) A court may transfer venue in accordance with Rule 42 of the Utah Rules of Civil
4636 Procedure.

4637 (2) A court to which an action is transferred has the same jurisdiction as if the action
4638 had been originally brought in that court.

4639 Section 107. Section **78B-3a-104** is enacted to read:

4640 **78B-3a-104. Residence of a business organization.**

4641 For purposes of this chapter, the residence of a business organization is:

4642 (1) the county where the business organization's principal place of business is located;

4643 (2) the county where the business organization's registered office is located if the

4644 business organization does not have a principal place of business in the state; or

4645 (3) Salt Lake County if the business organization does not have a principal place of
4646 business or a registered office in the state.

4647 Section 108. Section **78B-3a-201**, which is renumbered from Section 78B-3-307 is
4648 renumbered and amended to read:

4649 **Part 2. Venue Requirements**

4650 ~~[78B-3-307].~~ **78B-3a-201. All actions -- Exceptions.**

4651 (1) ~~[In all other cases an action shall be tried]~~ Except as otherwise provided by this
4652 chapter or another provision of the Utah Code, a plaintiff shall bring an action in the county in
4653 which:

4654 (a) the cause of action arises; or

4655 (b) any defendant resides at the commencement of the action.

4656 ~~[(2) If the defendant is a corporation, any county in which the corporation has its~~
4657 ~~principal office or a place of business shall be considered the county in which the corporation~~
4658 ~~resides.]~~

4659 ~~[(3)]~~ (2) If none of the defendants ~~[resides]~~ reside in this state, ~~[the action may be~~
4660 ~~commenced and tried]~~ the plaintiff may bring the action in any county designated by the
4661 plaintiff in the complaint.

4662 ~~[(4)]~~ (3) If the defendant is about to depart from the state, ~~[the action may be tried]~~ the
4663 plaintiff may bring the action in any county where any of the parties resides or service is had.

4664 Section 109. Section **78B-3a-202**, which is renumbered from Section 78B-3-301 is
4665 renumbered and amended to read:

4666 ~~[78B-3-301].~~ **78B-3a-202. Actions involving real property.**

4667 (1) ~~[Actions for the following causes involving real property shall be tried in the~~
4668 ~~county in which the subject of the action, or some part,]~~ A plaintiff shall bring the following
4669 actions involving real property in the county in which the real property, or some part of the real
4670 property, is situated:

4671 (a) for the recovery of real property~~;~~ or of an estate or interest in the property;

4672 (b) for the determination, in any form, of the right or interest in the real property;

4673 (c) for injuries to real property;

4674 (d) for the partition of real property; and

4675 (e) for the foreclosure of all liens and mortgages on real property.

4676 (2) If the real property is situated [~~partly in one county and partly in another, the~~
4677 ~~plaintiff may select either of the counties, and the county selected is the proper county for the~~
4678 ~~trial of the action]~~ in more than one county, the plaintiff may bring the action in any county in
4679 which the real property is situated.

4680 Section 110. Section **78B-3a-203**, which is renumbered from Section 78B-3-302 is
4681 renumbered and amended to read:

4682 ~~[78B-3-302].~~ **78B-3a-203. Actions to recover fines or penalties -- Actions**
4683 **against public officers.**

4684 (1) [~~Actions to recover fines or penalties shall be tried]~~ A plaintiff shall bring an action
4685 to recover a fine or penalty in the county where [the cause, or some part of the cause, arose]:

4686 (a) the cause of action arises; or

4687 (b) some part of the cause of action arises.

4688 (2) If a fine, penalty, or forfeiture imposed by statute is imposed for an offense
4689 committed on a lake, river, or other stream of water situated in two or more counties, [~~the~~
4690 ~~action may be brought]~~ the plaintiff may bring the action in any county bordering on the lake,
4691 river, or stream opposite to the place where the offense was committed.

4692 (3) Except as otherwise provided by law, a plaintiff shall bring an action against a
4693 public officer, or the public officer's designee, [~~shall be tried]~~ in the county where the [~~cause~~
4694 ~~arose]~~ cause of action arises.

4695 Section 111. Section **78B-3a-204**, which is renumbered from Section 78B-3-303 is
4696 renumbered and amended to read:

4697 ~~[78B-3-303].~~ **78B-3a-204. Actions against a county.**

4698 (1) [~~An action against a county may be commenced and tried]~~ Except as otherwise
4699 provided in Subsection (2), a plaintiff shall bring an action against a county in the county.

4700 (2) If the action is brought by another county, [~~the action may be commenced and tried~~
4701 ~~in]~~ the county may bring the action in any county not a party to the action.

4702 Section 112. Section **78B-3a-205**, which is renumbered from Section 78B-3-304 is
4703 renumbered and amended to read:

4704 ~~[78B-3-304].~~ **78B-3a-205. Actions on written contracts.**

4705 [~~An action]~~ A plaintiff shall bring an action on a contract signed in this state to perform
4706 an obligation [~~may be commenced and tried in the following venues]~~ in:

4707 (1) ~~[H]~~ if the action is to enforce an interest in real property securing a consumer's
4708 obligation, ~~[the action may be brought only in]~~ the county where the real property is located or
4709 where the defendant resides~~[-]; or~~

4710 (2) ~~[An action]~~ if the action is to enforce an interest other than under Subsection (1)
4711 ~~[may be brought in]~~, the county where the obligation is to be performed, the contract was
4712 signed, or in which the defendant resides.

4713 Section 113. Section **78B-3a-206** is enacted to read:

4714 **78B-3a-206. Transitory actions.**

4715 (1) Except for a transitory action under Subsection (2), a plaintiff shall bring a
4716 transitory action arising outside the state in the county where the defendant resides if the action
4717 is brought in this state.

4718 (2) A plaintiff shall bring a transitory action arising outside the state in favor of
4719 residents of this state in the county where:

4720 (a) the plaintiff resides; or

4721 (b) the principal defendant resides.

4722 Section 114. Section **78B-5-201** is amended to read:

4723 **78B-5-201. Definitions -- Judgment recorded in Registry of Judgments.**

4724 (1) ~~[For purposes of this part]~~ As used in this part, "Registry of Judgments" means the
4725 index where a judgment is filed and searchable by the name of the judgment debtor through
4726 electronic means or by tangible document.

4727 (2) On or after July 1, 1997, a judgment entered ~~[in a district court]~~ by a court of this
4728 state does not create a lien upon or affect the title to real property unless the judgment is filed
4729 in the Registry of Judgments of the office of the clerk of the district court of the county in
4730 which the property is located.

4731 (3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment
4732 entered ~~[in a district court]~~ by a court of this state does not create a lien upon or affect the title
4733 to real property unless the judgment or an abstract of judgment is recorded in the office of the
4734 county recorder in which the real property of the judgment debtor is located.

4735 (b) State agencies are exempt from the recording requirement of Subsection (3)(a).

4736 (4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is
4737 filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract

4738 of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include:

4739 (a) the information identifying the judgment debtor as required under Subsection (4)(b)
4740 on the judgment or abstract of judgment; or

4741 (b) a copy of the separate information statement of the judgment creditor that contains:

4742 (i) the correct name and last-known address of each judgment debtor and the address at
4743 which each judgment debtor received service of process;

4744 (ii) the name and address of the judgment creditor;

4745 (iii) the amount of the judgment as filed in the Registry of Judgments;

4746 (iv) if known, the judgment debtor's Social Security number, date of birth, and driver's
4747 license number if a natural person; and

4748 (v) whether or not a stay of enforcement has been ordered by the court and the date the
4749 stay expires.

4750 (5) For the information required in Subsection (4), the judgment creditor shall:

4751 (a) provide the information on the separate information statement if known or available
4752 to the judgment creditor from its records, its attorney's records, or the court records in the
4753 action in which the judgment was entered; or

4754 (b) state on the separate information statement that the information is unknown or
4755 unavailable.

4756 (6) (a) Any judgment that requires payment of money and is entered [~~in a district court~~]
4757 by a court of this state on or after September 1, 1998, or any judgment or abstract of judgment
4758 recorded in the office of a county recorder after July 1, 2002, that does not include the debtor
4759 identifying information as required in Subsection (4) is not a lien until a separate information
4760 statement of the judgment creditor is recorded in the office of a county recorder in compliance
4761 with Subsections (4) and (5).

4762 (b) The separate information statement of the judgment creditor referred to in
4763 Subsection (6)(a) shall include:

4764 (i) the name of any judgment creditor, debtor, assignor, or assignee;

4765 (ii) the date on which the judgment was recorded in the office of the county recorder as
4766 described in Subsection (4); and

4767 (iii) the county recorder's entry number and book and page of the recorded judgment.

4768 (7) A judgment that requires payment of money recorded on or after September 1,

4769 1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with
4770 actual or constructive knowledge of the judgment.

4771 (8) A judgment or notice of judgment wrongfully filed against real property is subject
4772 to Title 38, Chapter 9, Wrongful Lien Act.

4773 (9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the
4774 office of a county recorder, a person shall, in the office of the county recorder of each county in
4775 which an instrument creating the lien is recorded, record a document releasing, assigning,
4776 renewing, or extending the lien.

4777 (b) The document described in Subsection (9)(a) shall include:

4778 (i) the date of the release, assignment, renewal, or extension;

4779 (ii) the name of any judgment creditor, debtor, assignor, or assignee; and

4780 (iii) for the county in which the document is recorded in accordance with Subsection

4781 (9)(a):

4782 (A) the date on which the instrument creating the lien was recorded in that county's
4783 office of the county recorder; and

4784 (B) in accordance with Section 57-3-106, that county recorder's entry number and book
4785 and page of the recorded instrument creating the judgment lien.

4786 Section 115. Section 78B-5-202 is amended to read:

4787 **78B-5-202. Duration of judgment -- Judgment as a lien upon real property --**
4788 **Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child**
4789 **support orders.**

4790 (1) Judgments shall continue for eight years from the date of entry in a court unless
4791 previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

4792 (2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of
4793 judgment by a district court creates a lien upon the real property of the judgment debtor, not
4794 exempt from execution, owned or acquired during the existence of the judgment, located in the
4795 county in which the judgment is entered.

4796 (3) An abstract of judgment issued by the court in which the judgment is entered may
4797 be filed in any court of this state and shall have the same force and effect as a judgment entered
4798 in that court.

4799 (4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in [~~the small~~

4800 ~~claims division of any court]~~ a small claims action may not qualify as a lien upon real property
4801 unless abstracted to [~~the civil division of]~~ the district court and recorded in accordance with
4802 Subsection (3).

4803 (5) (a) If any judgment is appealed, upon deposit with the court where the notice of
4804 appeal is filed of cash or other security in a form and amount considered sufficient by the court
4805 that rendered the judgment to secure the full amount of the judgment, together with ongoing
4806 interest and any other anticipated damages or costs, including attorney fees and costs on appeal,
4807 the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

4808 (b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court
4809 shall enter an order terminating the lien created by the judgment and granting the judgment
4810 creditor a perfected lien in the deposited security as of the date of the original judgment.

4811 (6) (a) A child support order or a sum certain judgment for past due support may be
4812 enforced:

4813 (i) within four years after the date the youngest child reaches majority; or
4814 (ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

4815 (b) The longer period of duration shall apply in every order.

4816 (c) A sum certain judgment may be renewed to extend the duration.

4817 (7) (a) After July 1, 2002, a judgment entered by [~~a district court or a justice court in~~
4818 ~~the state]~~ a district court, a justice court, or the Business and Chancery Court, becomes a lien
4819 upon real property if:

4820 (i) the judgment or an abstract of the judgment containing the information identifying
4821 the judgment debtor as described in Subsection [78B-5-201\(4\)\(b\)](#) is recorded in the office of the
4822 county recorder; or

4823 (ii) the judgment or an abstract of the judgment and a separate information statement of
4824 the judgment creditor as described in Subsection [78B-5-201\(5\)](#) is recorded in the office of the
4825 county recorder.

4826 (b) The judgment shall run from the date of entry by the [~~district court or justice]~~ court.

4827 (c) The real property subject to the lien includes all the real property of the judgment
4828 debtor:

4829 (i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

4830 (ii) owned or acquired at any time by the judgment debtor during the time the judgment

4831 is effective.

4832 (d) State agencies are exempt from the recording requirement of Subsection (7)(a).

4833 (8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the
4834 judgment debtor in the judgment index in the office of the county recorder as required in
4835 Section 17-21-6.

4836 (b) A judgment containing a legal description shall also be abstracted in the appropriate
4837 tract index in the office of the county recorder.

4838 (9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the
4839 office of a county recorder, a person shall, in the office of the county recorder of each county in
4840 which an instrument creating the lien is recorded, record a document releasing, assigning,
4841 renewing, or extending the lien.

4842 (b) The document described in Subsection (9)(a) shall include:

4843 (i) the date of the release, assignment, renewal, or extension;

4844 (ii) the name of any judgment creditor, debtor, assignor, or assignee; and

4845 (iii) for the county in which the document is recorded in accordance with Subsection
4846 (9)(a):

4847 (A) the date on which the instrument creating the lien was recorded in that county's
4848 office of the county recorder; and

4849 (B) in accordance with Section 57-3-106, that county recorder's entry number and book
4850 and page of the recorded instrument creating the judgment lien.

4851 Section 116. Section 78B-5-206 is amended to read:

4852 **78B-5-206. Mileage allowance for judgment debtor required to appear.**

4853 (1) A judgment debtor legally required to appear before a district court [~~or a master~~] or
4854 the Business and Chancery Court to answer concerning the debtor's property is entitled, on a
4855 sufficient showing of need, to mileage of 15 cents per mile for each mile actually and
4856 necessarily traveled in going only, to be paid by the judgment creditor at whose instance the
4857 judgment debtor was required to appear.

4858 (2) The judgment creditor is not required to make any payment for such mileage until
4859 the judgment debtor has actually appeared before the court [~~or master~~].

4860 Section 117. Section 78B-6-110 is amended to read:

4861 **78B-6-110. Notice of adoption proceedings.**

4862 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
4863 sexual relationship with a woman:
4864 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
4865 the child may occur; and
4866 (ii) has a duty to protect his own rights and interests.
4867 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
4868 proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.
4869 (2) Notice of an adoption proceeding shall be served on each of the following persons:
4870 (a) any person or agency whose consent or relinquishment is required under Section
4871 78B-6-120 or 78B-6-121, unless that right has been terminated by:
4872 (i) waiver;
4873 (ii) relinquishment;
4874 (iii) actual or implied consent; or
4875 (iv) judicial action;
4876 (b) any person who has initiated a paternity proceeding and filed notice of that action
4877 with the state registrar of vital statistics within the Department of Health and Human Services,
4878 in accordance with Subsection (3);
4879 (c) any legally appointed custodian or guardian of the adoptee;
4880 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
4881 petition;
4882 (e) the adoptee's spouse, if any;
4883 (f) any person who, prior to the time the mother executes her consent for adoption or
4884 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
4885 the knowledge and consent of the mother;
4886 (g) a person who is:
4887 (i) openly living in the same household with the child at the time the consent is
4888 executed or relinquishment made; and
4889 (ii) holding himself out to be the child's father; and
4890 (h) any person who is married to the child's mother at the time she executes her consent
4891 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
4892 spouse is not the child's father under Section 78B-15-607.

4893 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
4894 consistent with Subsection (3)(d):

4895 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
4896 Chapter 15, Utah Uniform Parentage Act; and

4897 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
4898 with the office of vital statistics within the Department of Health and Human Services.

4899 (b) If the unmarried, biological father does not know the county in which the birth
4900 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
4901 Section [~~78B-3-307~~] [78B-3a-201](#).

4902 (c) The Department of Health and Human Services shall provide forms for the purpose
4903 of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the
4904 office of the county health department in each county.

4905 (d) When the state registrar of vital statistics receives a completed form, the registrar
4906 shall:

4907 (i) record the date and time the form was received; and

4908 (ii) immediately enter the information provided by the unmarried biological father in
4909 the confidential registry established by Subsection [78B-6-121](#)(3)(c).

4910 (e) The action and notice described in Subsection (3)(a):

4911 (i) may be filed before or after the child's birth; and

4912 (ii) shall be filed prior to the mother's:

4913 (A) execution of consent to adoption of the child; or

4914 (B) relinquishment of the child for adoption.

4915 (4) Notice provided in accordance with this section need not disclose the name of the
4916 mother of the child who is the subject of an adoption proceeding.

4917 (5) The notice required by this section:

4918 (a) may be served at any time after the petition for adoption is filed, but may not be
4919 served on a birth mother before she has given birth to the child who is the subject of the
4920 petition for adoption;

4921 (b) shall be served at least 30 days prior to the final dispositional hearing;

4922 (c) shall specifically state that the person served shall fulfill the requirements of
4923 Subsection (6)(a) within 30 days after the day on which the person receives service if the

4924 person intends to intervene in or contest the adoption;

4925 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
4926 to file a motion for relief within 30 days after the day on which the person is served with notice
4927 of an adoption proceeding;

4928 (e) is not required to include, nor be accompanied by, a summons or a copy of the
4929 petition for adoption;

4930 (f) shall state where the person may obtain a copy of the petition for adoption; and

4931 (g) shall indicate the right to the appointment of counsel for a party whom the court
4932 determines is indigent and at risk of losing the party's parental rights.

4933 (6) (a) A person who has been served with notice of an adoption proceeding and who
4934 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

4935 (i) within 30 days after the day on which the person was served with notice of the
4936 adoption proceeding;

4937 (ii) setting forth specific relief sought; and

4938 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
4939 which the motion is based.

4940 (b) A person who fails to fully and strictly comply with all of the requirements
4941 described in Subsection (6)(a) within 30 days after the day on which the person was served
4942 with notice of the adoption proceeding:

4943 (i) waives any right to further notice in connection with the adoption;

4944 (ii) forfeits all rights in relation to the adoptee; and

4945 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
4946 the adoptee.

4947 (7) Service of notice under this section shall be made as follows:

4948 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
4949 under Section [78B-6-120](#) or [78B-6-121](#) shall be in accordance with the provisions of the Utah
4950 Rules of Civil Procedure.

4951 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
4952 shall designate the content of the notice regarding the identity of the parties.

4953 (iii) The notice described in this Subsection (7)(a) may not include the name of a
4954 person seeking to adopt the adoptee.

4955 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
4956 is required under this section, service by certified mail, return receipt requested, is sufficient.

4957 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
4958 attempts, the court may issue an order providing for service by publication, posting, or by any
4959 other manner of service.

4960 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
4961 action with the state registrar of vital statistics in the Department of Health and Human
4962 Services in accordance with the requirements of Subsection (3), shall be served by certified
4963 mail, return receipt requested, at the last address filed with the registrar.

4964 (8) The notice required by this section may be waived in writing by the person entitled
4965 to receive notice.

4966 (9) Proof of service of notice on all persons for whom notice is required by this section
4967 shall be filed with the court before the final dispositional hearing on the adoption.

4968 (10) Notwithstanding any other provision of law, neither the notice of an adoption
4969 proceeding nor any process in that proceeding is required to contain the name of the person or
4970 persons seeking to adopt the adoptee.

4971 (11) Except as to those persons whose consent to an adoption is required under Section
4972 [78B-6-120](#) or [78B-6-121](#), the sole purpose of notice under this section is to enable the person
4973 served to:

4974 (a) intervene in the adoption; and

4975 (b) present evidence to the court relevant to the best interest of the child.

4976 Section 118. Section **78B-6-313** is amended to read:

4977 **78B-6-313. Contempt of process of nonjudicial officer -- Procedure.**

4978 (1) If a person, officer, referee, arbitrator, board, or committee with the authority to
4979 compel the attendance of witnesses or the production of documents issues a subpoena and the
4980 person to whom the subpoena is issued refuses to appear or produce the documents ordered, the
4981 person shall be considered in contempt.

4982 (2) (a) The person, officer, referee, arbitrator, board, or committee may report the
4983 person to whom the subpoena is issued to the ~~[judge of the district]~~ court.

4984 (b) The court may then issue a warrant of attachment or order to show cause to compel
4985 the person's appearance.

4986 (3) When a person charged has been brought up or has appeared, the person's contempt
4987 may be purged in the same manner as other contempts mentioned in this part.

4988 Section 119. Section **78B-6-1303** is amended to read:

4989 **78B-6-1303. Lis pendens -- Notice.**

4990 (1) (a) Any party to an action filed in the United States District Court for the District of
4991 Utah, the United States Bankruptcy Court for the District of Utah, [~~or a Utah district court~~] a
4992 district court of this state, or the Business and Chancery Court of this state, that affects the title
4993 to, or the right of possession of, real property may file a notice of pendency of action.

4994 (b) A party that chooses to file a notice of pendency of action shall:

4995 (i) first, file the notice with the court that has jurisdiction of the action; and

4996 (ii) second, record a copy of the notice filed with the court with the county recorder in
4997 the county where the property or any portion of the property is located.

4998 (c) A person may not file a notice of pendency of action unless a case has been filed
4999 and is pending in [~~a United States or Utah district court~~] the United States District Court for the
5000 District of Utah, the United States Bankruptcy Court for the District of Utah, a district court of
5001 this state, or the Business and Chancery Court of this state.

5002 (2) The notice shall contain:

5003 (a) the caption of the case, with the names of the parties and the case number;

5004 (b) the object of the action or defense; and

5005 (c) the specific legal description of only the property affected.

5006 (3) From the time of filing the notice, a purchaser, an encumbrancer of the property, or
5007 any other party in interest that may be affected by the action is considered to have constructive
5008 notice of pendency of action.

5009 Section 120. Section **78B-6-1904** is amended to read:

5010 **78B-6-1904. Action -- Enforcement -- Remedies -- Damages.**

5011 (1) (a) A target who has received a demand letter asserting patent infringement in bad
5012 faith, or a person aggrieved by a violation of this part, may bring an action [~~in district court~~] in
5013 a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

5014 (b) The court may award the following remedies to a target who prevails in an action
5015 brought pursuant to this part:

5016 [~~(a)~~] (i) equitable relief;

5017 ~~[(b)]~~ (ii) actual damages;
5018 ~~[(c)]~~ (iii) costs and fees, including reasonable attorney fees; and
5019 ~~[(d)]~~ (iv) punitive damages in an amount to be established by the court, of not more
5020 than the greater of \$50,000 or three times the total of damages, costs, and fees.

5021 (2) (a) The attorney general may conduct civil investigations and bring civil actions
5022 pursuant to this part.

5023 (b) In an action brought by the attorney general under this part, the court may award or
5024 impose any relief ~~[(t)]~~ the court considers prudent, including the following:

5025 ~~[(a)]~~ (i) equitable relief;

5026 ~~[(b)]~~ (ii) statutory damages of not less than \$750 per demand letter distributed in bad
5027 faith; and

5028 ~~[(c)]~~ (iii) costs and fees, including reasonable attorney fees, to the attorney general.

5029 (3) This part may not be construed to limit other rights and remedies available to the
5030 state or to any person under any other law.

5031 (4) A demand letter or assertion of a patent infringement that includes a claim for relief
5032 arising under 35 U.S.C. Sec. 271(e)(2) is not subject to the provisions of this part.

5033 (5) The attorney general shall annually provide an electronic report to the Executive
5034 Appropriations Committee regarding the number of investigations and actions brought under
5035 this part. The report shall include:

5036 (a) the number of investigations commenced;

5037 (b) the number of actions brought under the provisions of this part;

5038 (c) the current status of actions brought under Subsection (5)(b); and

5039 (d) final resolution of actions brought under this part, including any recovery under
5040 Subsection (2).

5041 Section 121. Section **78B-6-1905** is amended to read:

5042 **78B-6-1905. Bond.**

5043 (1) Upon motion by a target and a finding by the court that a target has established a
5044 reasonable likelihood that a sponsor has made a bad faith assertion of patent infringement in a
5045 demand letter in violation of this part, the court shall require the sponsor to post a bond in an
5046 amount equal to a good faith estimate of the target's costs to litigate the claim under this part
5047 and amounts reasonably likely to be recovered under Subsections ~~[78B-6-1904(1)(b) and (c)]~~

5048 [78B-6-1904\(1\)\(b\)\(ii\) and \(iii\)](#), conditioned upon payment of any amounts finally determined to
5049 be due to the target.

5050 (2) A hearing on the appropriateness and amount of a bond under this section shall be
5051 held if either party requests it.

5052 (3) A bond ordered pursuant to this section may not exceed \$250,000. The court may
5053 waive the bond requirement if it finds the sponsor has available assets equal to the amount of
5054 the proposed bond or for other good cause shown.

5055 Section 122. Section **78B-21-102** is amended to read:

5056 **78B-21-102. Definitions.**

5057 As used in this chapter:

5058 (1) "Affiliate" means:

5059 (a) with respect to an individual:

5060 (i) a companion of the individual;

5061 (ii) a lineal ancestor or descendant, whether by blood or adoption, of:

5062 (A) the individual; or

5063 (B) a companion of the individual;

5064 (iii) a companion of an ancestor or descendant described in Subsection (1)(a)(ii);

5065 (iv) a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,

5066 grandniece, or grandnephew of the individual, whether related by the whole or the half blood or

5067 adoption, or a companion of a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece,

5068 nephew, grandniece, or grandnephew of the individual; or

5069 (v) any other individual occupying the residence of the individual; and

5070 (b) with respect to a person other than an individual:

5071 (i) another person that directly or indirectly controls, is controlled by, or is under

5072 common control with the person;

5073 (ii) an officer, director, manager, member, partner, employee, or trustee or other

5074 fiduciary of the person; or

5075 (iii) a companion of, or an individual occupying the residence of, an individual

5076 described in Subsection (1)(b)(i) or (ii).

5077 (2) "Companion" means:

5078 (a) the spouse of an individual;

- 5079 (b) the domestic partner of an individual; or
- 5080 (c) another individual in a civil union with an individual.
- 5081 (3) "Court" means a [~~district court in the state~~] court of this state with jurisdiction over
- 5082 the action under Title 78A, Judiciary and Judicial Administration.
- 5083 (4) "Executory contract" means a contract, including a lease, under which each party
- 5084 has an unperformed obligation and the failure of a party to complete performance would
- 5085 constitute a material breach.
- 5086 (5) "Governmental unit" means an office, department, division, bureau, board,
- 5087 commission, or other agency of this state or a subdivision of this state.
- 5088 (6) "Lien" means an interest in property that secures payment or performance of an
- 5089 obligation.
- 5090 (7) "Mortgage" means a record, however denominated, that creates or provides for a
- 5091 consensual lien on real property or rents, even if the mortgage also creates or provides for a lien
- 5092 on personal property.
- 5093 (8) "Mortgagee" means a person entitled to enforce an obligation secured by a
- 5094 mortgage.
- 5095 (9) "Mortgagor" means a person that grants a mortgage or a successor in ownership of
- 5096 the real property described in the mortgage.
- 5097 (10) "Owner" means the person for whose property a receiver is appointed.
- 5098 (11) "Person" means an individual, estate, business or nonprofit entity, public
- 5099 corporation, government or governmental subdivision, agency, or instrumentality, or other
- 5100 legal entity.
- 5101 (12) "Proceeds" means the following property:
- 5102 (a) whatever is acquired on the sale, lease, license, exchange, or other disposition of
- 5103 receivership property;
- 5104 (b) whatever is collected on, or distributed on account of, receivership property;
- 5105 (c) rights arising out of receivership property;
- 5106 (d) to the extent of the value of receivership property, claims arising out of the loss,
- 5107 nonconformity, or interference with the use of, defects or infringement of rights in, or damage
- 5108 to the property; or
- 5109 (e) to the extent of the value of receivership property and to the extent payable to the

5110 owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or
5111 infringement of rights in, or damage to the property.

5112 (13) "Property" means all of a person's right, title, and interest, both legal and
5113 equitable, in real and personal property, tangible and intangible, wherever located and however
5114 acquired. The term includes proceeds, products, offspring, rents, or profits of or from the
5115 property.

5116 (14) "Receiver" means a person appointed by the court as the court's agent, and subject
5117 to the court's direction, to take possession of, manage, and, if authorized by this chapter or
5118 court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership
5119 property.

5120 (15) "Receivership" means a proceeding in which a receiver is appointed.

5121 (16) "Receivership property" means the property of an owner that is described in the
5122 order appointing a receiver or a subsequent order. The term includes any proceeds, products,
5123 offspring, rents, or profits of or from the property.

5124 (17) "Record" means, when used as a noun, information that is inscribed on a tangible
5125 medium or that is stored on an electronic or other medium and is retrievable in perceivable
5126 form.

5127 (18) "Rents" means:

5128 (a) sums payable for the right to possess or occupy, or for the actual possession or
5129 occupation of, real property of another person;

5130 (b) sums payable to a mortgagor under a policy of rental-interruption insurance
5131 covering real property;

5132 (c) claims arising out of a default in the payment of sums payable for the right to
5133 possess or occupy real property of another person;

5134 (d) sums payable to terminate an agreement to possess or occupy real property of
5135 another person;

5136 (e) sums payable to a mortgagor for payment or reimbursement of expenses incurred in
5137 owning, operating, and maintaining real property or constructing or installing improvements on
5138 real property; or

5139 (f) other sums payable under an agreement relating to the real property of another
5140 person which constitute rents under law of the state other than this chapter.

5141 (19) "Secured obligation" means an obligation the payment or performance of which is
5142 secured by a security agreement.

5143 (20) "Security agreement" means an agreement that creates or provides for a lien.

5144 (21) "Sign" means, with present intent to authenticate or adopt a record:

5145 (a) to execute or adopt a tangible symbol; or

5146 (b) to attach to or logically associate with the record an electronic sound, symbol, or
5147 process.

5148 Section 123. **Repealer.**

5149 This bill repeals:

5150 Section **3-1-20.2, Procedure for judicial dissolution.**

5151 Section **16-6a-1415, Procedure for judicial dissolution.**

5152 Section **16-10a-1431, Procedure for judicial dissolution.**

5153 Section **34-34-14, Jurisdiction.**

5154 Section **78B-3-305, Transitory actions -- Residence of corporations.**

5155 Section **78B-3-306, Arising without this state in favor of resident.**

5156 Section **78B-3-308, Change of venue -- Conditions precedent.**

5157 Section **78B-3-309, Grounds.**

5158 Section **78B-3-310, Court to which transfer is to be made.**

5159 Section **78B-3-311, Duty of clerk -- Fees and costs -- Effect on jurisdiction.**

5160 Section 124. **Effective date.**

5161 This bill takes effect on July 1, 2024.

5162 Section 125. **Coordinating H.B. 251 with S.B. 129 -- Superseding technical and**
5163 **substantive amendments.**

5164 If this H.B. 251 and S.B. 129, Judiciary Amendments, both pass and become law, the
5165 Legislature intends that, on July 1, 2024, the Office of Legislative Research and General
5166 Counsel prepare the Utah Code database for publication as follows:

5167 (1) the amendments to Section 31A-5-414 in H.B. 251 supersede the amendments to
5168 Section 31A-5-414 in S.B. 129;

5169 (2) the amendments to Section 31A-5-415 in H.B. 251 supersede the amendments to
5170 Section 31A-5-415 in S.B. 129; and

5171 (3) the amendments to Section 31A-16-111 in H.B. 251 supersede the amendments to

5172 Section [31A-16-111](#) in S.B. 129.

5173 Section 126. **Revisor instructions.**

5174 The Legislature intends that the Office of Legislative Research and General Counsel, in

5175 preparing the Utah Code database for publication, not enroll this bill if H.B. 216, Business and

5176 Chancery Court Amendments, does not pass.