

# HB0251S01 compared with HB0251

~~{deleted text}~~ shows text that was in HB0251 but was deleted in HB0251S01.

inserted text shows text that was not in HB0251 but was inserted into HB0251S01.

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Representative Brady Brammer proposes the following substitute bill:

## COURT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brady {}Brammer**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill amends provisions related to courts.

#### Highlighted Provisions:

This bill:

- ▶ amends provisions related to civil actions~~{, including the filing or bringing of a civil action,}~~ in the district court in the following titles:
  - Title 3, Uniform Agricultural Cooperative Association Act;
  - Title 7, Financial Institutions Act;
  - Title 16, Corporations;
  - Title 31A, Insurance Code;
  - Title 35A, Utah Workforce Services Code;
  - Title 48, Unincorporated Business Entity Act;

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- Title 57, Real Estate;
  - Title 61, Securities Division - Real Estate Division;
  - Title 70, Trademarks and Trade Names;
  - Title 70A, Uniform Commercial Code; and
  - Title 78B, Judicial Code;
- ▶ enacts a venue provision for the Commissioner of Financial Institutions;
  - ▶ enacts a venue provision for the Commissioner of the Insurance Department;
  - ▶ enacts Title 78B, Chapter 3a, Venue for Civil Actions;
  - ▶ defines terms related to the venue of a civil action;
  - ▶ clarifies the applicability of Title 78B, Chapter 3a, Venue for Civil Actions;
  - ▶ addresses the transfer of venue for a civil action;
  - ▶ clarifies the residence of a business organization for purposes of venue;
  - ▶ amends venue provisions for various types of civil actions;
  - ▶ amends provisions related to judgments entered by the district court or justice court;
  - ▶ amends provisions related to a mileage allowance for a judgment debtor;
  - ▶ amends provisions related to contempt by a nonjudicial officer;
  - ▶ amends provisions related to the filing of a notice of lis pendens;
  - ▶ repeals statutes related to court venue, jurisdiction, and procedure;
  - ▶ repeals statutes related to a change of venue; and
  - ▶ makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a special effective date.

[This bill provides a coordination clause.](#)

[This bill provides revisor instructions.](#)

### **Utah Code Sections Affected:**

AMENDS:

**3-1-20**, as last amended by Laws of Utah 1994, Chapter 202

**3-1-20.1**, as enacted by Laws of Utah 2003, Chapter 70

**7-1-703**, as last amended by Laws of Utah 2017, Chapter 169

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**7-2-2**, as last amended by Laws of Utah 2014, Chapter 189  
**7-2-5**, as last amended by Laws of Utah 1983, Chapter 8  
**7-2-6**, as last amended by Laws of Utah 2015, Chapter 258  
**7-2-9**, as last amended by Laws of Utah 2010, Chapter 378  
**7-2-10**, as last amended by Laws of Utah 2010, Chapter 378  
**7-5-13**, as last amended by Laws of Utah 1989, Chapter 267  
**7-23-401**, as last amended by Laws of Utah 2020, Chapter 121  
**16-6a-117**, as enacted by Laws of Utah 2000, Chapter 300  
**16-6a-703**, as last amended by Laws of Utah 2008, Chapter 364  
**16-6a-710**, as last amended by Laws of Utah 2008, Chapter 364  
**16-6a-809**, as last amended by Laws of Utah 2001, Chapters 9, 127  
**16-6a-1405**, as last amended by Laws of Utah 2015, Chapter 240  
**16-6a-1414**, as enacted by Laws of Utah 2000, Chapter 300  
**16-6a-1416**, as enacted by Laws of Utah 2000, Chapter 300  
**16-6a-1417**, as enacted by Laws of Utah 2000, Chapter 300  
**16-6a-1604**, as last amended by Laws of Utah 2008, Chapter 364  
**16-6a-1609**, as last amended by Laws of Utah 2002, Chapter 197  
**16-10a-126**, as enacted by Laws of Utah 1992, Chapter 277  
**16-10a-303**, as enacted by Laws of Utah 1992, Chapter 277  
**16-10a-703**, as last amended by Laws of Utah 2008, Chapter 364  
**16-10a-720**, as last amended by Laws of Utah 2010, Chapter 378  
**16-10a-1330**, as last amended by Laws of Utah 2010, Chapter 378  
**16-10a-1430**, as enacted by Laws of Utah 1992, Chapter 277  
**16-10a-1434**, as last amended by Laws of Utah 2010, Chapter 378  
**16-10a-1532**, as last amended by Laws of Utah 2000, Chapter 131  
**16-10a-1604**, as last amended by Laws of Utah 2008, Chapter 364  
**16-11-13**, as last amended by Laws of Utah 2000, Chapter 261  
**16-16-202**, as enacted by Laws of Utah 2008, Chapter 363  
**16-16-1203**, as enacted by Laws of Utah 2008, Chapter 363  
**16-16-1206**, as enacted by Laws of Utah 2008, Chapter 363  
**16-16-1210**, as enacted by Laws of Utah 2008, Chapter 363

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**24-1-103**, as last amended by Laws of Utah 2021, Chapter 230  
**31A-2-305**, as last amended by Laws of Utah 1997, Chapter 296  
**31A-5-414**, as enacted by Laws of Utah 1985, Chapter 242  
**31A-5-415**, as last amended by Laws of Utah 2000, Chapter 300  
**31A-15-211**, as enacted by Laws of Utah 1992, Chapter 258  
**31A-16-107.5**, as renumbered and amended by Laws of Utah 2015, Chapter 244  
**31A-16-110**, as last amended by Laws of Utah 1986, Chapter 204  
**31A-16-111**, as last amended by Laws of Utah 2000, Chapter 114  
**31A-16-112**, as enacted by Laws of Utah 2015, Chapter 244  
**31A-16-117**, as enacted by Laws of Utah 2015, Chapter 244  
**31A-17-610**, as last amended by Laws of Utah 2007, Chapter 309  
**31A-27a-105**, as last amended by Laws of Utah 2020, Chapter 32  
**31A-27a-201**, as last amended by Laws of Utah 2014, Chapters 290, 300  
**31A-27a-206**, as enacted by Laws of Utah 2007, Chapter 309  
**31A-27a-207**, as enacted by Laws of Utah 2007, Chapter 309  
**31A-27a-209**, as enacted by Laws of Utah 2007, Chapter 309  
**31A-44-501**, as enacted by Laws of Utah 2016, Chapter 270  
**35A-4-308**, as renumbered and amended by Laws of Utah 1996, Chapter 240  
**35A-4-314**, as enacted by Laws of Utah 2013, Chapter 473  
**48-1d-111**, as enacted by Laws of Utah 2013, Chapter 412  
**48-1d-116**, as enacted by Laws of Utah 2013, Chapter 412  
**48-1d-901**, as enacted by Laws of Utah 2013, Chapter 412  
**48-1d-902**, as enacted by Laws of Utah 2013, Chapter 412  
**48-1d-903**, as enacted by Laws of Utah 2013, Chapter 412  
**48-1d-909**, as enacted by Laws of Utah 2013, Chapter 412  
**48-1d-1003**, as enacted by Laws of Utah 2013, Chapter 412  
**48-1d-1310**, as enacted by Laws of Utah 2013, Chapter 412  
**48-2e-204**, as enacted by Laws of Utah 2013, Chapter 412  
**48-2e-209**, as enacted by Laws of Utah 2013, Chapter 412  
**48-2e-801**, as enacted by Laws of Utah 2013, Chapter 412  
**48-2e-802**, as enacted by Laws of Utah 2013, Chapter 412

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**48-2e-803**, as enacted by Laws of Utah 2013, Chapter 412  
**48-2e-808**, as enacted by Laws of Utah 2013, Chapter 412  
**48-2e-1103**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-204**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-209**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-701**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-702**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-703**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-704**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-707**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-1003**, as enacted by Laws of Utah 2013, Chapter 412  
**48-3a-1111**, as enacted by Laws of Utah 2013, Chapter 412  
**57-8-44**, as last amended by Laws of Utah 2014, Chapter 116  
**57-8a-301**, as last amended by Laws of Utah 2014, Chapter 116  
**57-17-5**, as last amended by Laws of Utah 2015, Chapter 258  
**57-19-20**, as last amended by Laws of Utah 2008, Chapter 382  
**57-21-11**, as last amended by Laws of Utah 1997, Chapter 375  
**57-22-6**, as last amended by Laws of Utah 2017, Chapter 203  
**57-23-7**, as enacted by Laws of Utah 1992, Chapter 169  
**57-23-8**, as last amended by Laws of Utah 2008, Chapter 382  
**57-29-303**, as enacted by Laws of Utah 2016, Chapter 381  
**57-29-304**, as enacted by Laws of Utah 2016, Chapter 381  
**61-1-20**, as last amended by Laws of Utah 2016, Chapter 401  
**61-1-105**, as enacted by Laws of Utah 2011, Chapter 318  
**61-2-203**, as last amended by Laws of Utah 2021, Chapter 259  
**61-2c-403**, as last amended by Laws of Utah 2009, Chapter 372  
**61-2f-403**, as last amended by Laws of Utah 2017, Chapter 182  
**61-2f-407**, as last amended by Laws of Utah 2018, Chapter 213  
**61-2g-501**, as last amended by Laws of Utah 2018, Chapter 213  
**70-3a-309**, as enacted by Laws of Utah 2010, Chapter 200  
**70-3a-402**, as last amended by Laws of Utah 2010, Chapter 200

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**70-3a-405**, as enacted by Laws of Utah 2002, Chapter 318

**70A-8-409.1**, as last amended by Laws of Utah 2012, Chapter 386

**70A-9a-513.5**, as enacted by Laws of Utah 2015, Chapter 228

**78A-6-350**, as renumbered and amended by Laws of Utah 2021, Chapter 261

**78B-1-132**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-5-201**, as last amended by Laws of Utah 2014, Chapters 114, 151

**78B-5-202**, as last amended by Laws of Utah 2014, Chapter 151

**78B-5-206**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-110**, as last amended by Laws of Utah 2019, Chapter 491

**78B-6-313**, as enacted by Laws of Utah 2008, Chapter 3

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

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

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

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

### ENACTS:

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

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

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

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

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

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

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

### RENUMBERS AND AMENDS:

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

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

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

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

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

### REPEALS:

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

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

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

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

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

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

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

**78B-3-309**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-3-310**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-3-311**, as renumbered and amended by Laws of Utah 2008, Chapter 3

### Utah Code Sections Affected by Coordination Clause:

**31A-5-414**, as enacted by Laws of Utah 1985, Chapter 242

**31A-5-415**, as last amended by Laws of Utah 2000, Chapter 300

**31A-16-111**, as last amended by Laws of Utah 2000, Chapter 114

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*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.

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(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] ~~against the association~~ 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:

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

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

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

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

(v) other matters ~~{ }~~ related to the dissolution.

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

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

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

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

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

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



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basis of patronage during that period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) issue injunctions;

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

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

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

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

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

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

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

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

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

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

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

(b) vote the stock of a depository institution or depository institution holding company

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subject to the jurisdiction of the department acquired in violation of Section 7-1-705;

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

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

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

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

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

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

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

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

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

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

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

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

(5) The commissioner may exempt a class of financial institutions from this section by

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rule if the commissioner finds the exception to be in the public interest.

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

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

- (i) a Utah depository institution only if it has been in existence for at least five years; or
- (ii) a Utah branch of a depository institution only if the branch has been in existence for at least five years.

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

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

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

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

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

~~[(1) The district court for the county in which the principal office of the institution or~~

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~~other person is situated has jurisdiction in the liquidation or reorganization of the institution or other person of which the commissioner has taken possession under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies. As used in this chapter, "court" means the court given jurisdiction by this provision.]~~

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

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

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

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

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

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

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

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

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

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

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

~~[No receiver may be]~~ ~~{ }~~

(1) A receiver may not be appointed by any court and ~~[no]~~ a deed or assignment for the

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benefit of creditors may not be filed in [~~any district court~~] a court within this state for any institution or other person under the jurisdiction of the commissioner, except upon notice to the commissioner, unless because of urgent necessity the court determines that it is necessary to do so to preserve the assets of the institution.

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

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

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

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

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

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

- (i) the commissioner finds it is in the best interests of the institution and its depositors not to notify the public of the possession by the commissioner;
- (ii) the deposit and withdrawal of funds and payment to creditors of the institution is not suspended, restricted, or interrupted; and
- (iii) the court approves.

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

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

(iii) The notice shall be published:

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

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

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

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

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

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

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

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

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

(ii) (A) Inadvertent or unintentional failure to mail a notice to any person entitled to

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written notice under this paragraph does not impose any liability on the commissioner or any receiver or liquidator appointed by [him] the commissioner beyond the amount the claimant would be entitled to receive if the claim had been timely filed and allowed.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

(iii) If the institution held on the date of possession by the commissioner a policy of

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insurance that would apply to the liability asserted by the claimant, the commissioner, or any receiver appointed by [~~him~~] the commissioner may assign to the claimant all rights of the institution under the insurance policy in full satisfaction of the claim.

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

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

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

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

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

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

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

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

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

(j) The commissioner may establish both binding and nonbinding processes, which

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may be conducted by any government or private party, but all parties, including the claimant and the commissioner or any receiver appointed by ~~[him]~~ the commissioner, must agree to the use of the process in a particular case.

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

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

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

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

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

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

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

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

(i) is in writing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) (a) All claims allowed by the commissioner and not disallowed or otherwise modified by the court under Subsection (9), if not paid within 30 days after allowance, shall be evidenced by a certificate payable only out of the assets of the institution in the possession of

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the commissioner, subject to the priorities set forth in Section 7-2-15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(b) (ii) [The petition shall state]~~ the petition states in simple, concise, and direct terms

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the facts and principles of law upon which the petitioner claims the act, decision, or agreement of the receiver was or would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may be damaged thereby.

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

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

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

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

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

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

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

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

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

(3) The commissioner, or any receiver or liquidator appointed by ~~[him]~~ the commissioner, shall in like manner make and file supplemental lists showing all claims



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presented after the filing of the first list.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Unless ordered to do so by a court [~~of competent jurisdiction~~], a trust company operating collective investment funds is not required to render a court accounting with regard to those funds[~~; but it may, by application to the district court,~~] but the trust company may

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~~bring a~~ petition ~~to~~ a court with jurisdiction under the Title 78A, Judiciary and Judicial Administration, to secure approval of such an accounting on such conditions as the court may establish.

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

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

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

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

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

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

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

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

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

(c) conspicuously disclose in the written contract:

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

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

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

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

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- (v) (A) the name and address of a designated agent required to be provided the department under Subsection 7-23-201(2)(d)(vi); and
  - (B) a statement that service of process may be made to the designated agent;
  - (d) provide the person seeking the deferred deposit loan:
    - (i) a copy of the written contract described in Subsection (1)(c); and
    - (ii) written notice that the person seeking the deferred deposit loan is eligible to enter into an extended payment plan described in Section 7-23-403;
  - (e) orally review with the person seeking the deferred deposit loan the terms of the deferred deposit loan including:
    - (i) the amount of any interest rate or fee;
    - (ii) the date on which the full amount of the deferred deposit loan is due;
    - (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;
    - (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;
    - (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan; and
    - (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed;
  - (f) comply with the following as in effect on the date the deferred deposit loan is extended:
    - (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;
    - (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;
    - (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and

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31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

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

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

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

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

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

(a) in a conspicuous manner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) (a) Before initiating a civil action against a person who owes money on a deferred

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deposit loan, a deferred deposit lender shall provide the person at least 30 days notice of default, describing that:

(i) the person must remedy the default; and

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

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

(i) by sending written notice to the address provided by the person to the deferred deposit lender;

(ii) by sending an electronic transmission to a person if electronic contact information is provided to the deferred deposit lender; or

(iii) pursuant to the Utah Rules of Civil Procedure.

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

(i) be in English, if the initial transaction is conducted in English;

(ii) state the date by which the person must act to enter into an extended payment plan;

(iii) explain the procedures the person must follow to enter into an extended payment plan;

(iv) subject to Subsection 7-23-403(7), if the deferred deposit lender requires the person to make an initial payment to enter into an extended payment plan:

(A) explain the requirement; and

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

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

(vi) include the following amounts:

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

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

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

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

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

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

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

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

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

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

(i) a meeting be called; or

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

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

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

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

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

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

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

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



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

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

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

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

(a) quorums; or

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

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

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

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

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

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

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

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

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

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

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

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principal office is located; or]

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

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

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

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

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

~~[(ii) (b) [any] A person who participated in a call of or demand for a special meeting effective under Subsection 16-6a-702(1)[;] may ~~bring an action against a corporation~~ petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration,~~ if:

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

~~[(†) the date of the call[;] or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) to vote at the meeting; or

(ii) to take the action by written ballot.

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

(i) be arranged by voting group;

(ii) be alphabetical within each voting group;

(iii) show the address of each member entitled to notice of, and to vote at, the meeting or to take such action by written ballot; and

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

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

(i) (A) beginning the earlier of:

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

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

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

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

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

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

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

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

(i) during:

(A) regular business hours; and

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

(ii) at the member's expense.

(3) (a) [~~On application of a~~] A member of a nonprofit corporation [~~the applicable district court may take an action described in Subsection (3)(b)] may bring an action against a nonprofit corporation petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, if the nonprofit corporation refuses to allow a member entitled to vote at the meeting or by the written ballot, or an agent or attorney of a member entitled to vote at the meeting or by the written ballot, to inspect or copy the members' list during the period [it] the nonprofit corporation is required to be available for inspection under Subsection (2).~~

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

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

(ii) until the inspection or copying is complete:

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

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

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

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

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

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

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agent or attorney of the member to inspect or copy the members' list:

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

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

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

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

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

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

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

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

(i) the director engaged in:

(A) fraudulent or dishonest conduct; or

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

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

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

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

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

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

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

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

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

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court from:

- (a) reelection;
- (b) reappointment; or
- (c) designation.

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

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

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

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

(1) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

- (a) collecting its assets;
- (b) returning, transferring, or conveying assets held by the nonprofit corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with the condition;
- (c) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
- (d) discharging or making provision for discharging its liabilities; and
- (e) doing every other act necessary to wind up and liquidate its assets and affairs.

(2) Dissolution of a nonprofit corporation does not:

- (a) transfer title to the nonprofit corporation's property including title to water rights, water conveyance facilities, or other assets of a nonprofit corporation organized to divert or distribute water to its members;
- (b) subject its directors or officers to standards of conduct different from those prescribed in this chapter;
- (c) change quorum or voting requirements for its board of directors or members;
- (d) change provisions for selection, resignation, or removal of its directors or officers, or both;
- (e) change provisions for amending its bylaws or its articles of incorporation;
- (f) prevent commencement of a proceeding by or against the nonprofit corporation in

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its corporate name; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) [~~A nonprofit corporation may be dissolved in a proceeding by a creditor~~] A creditor may bring an action [in a court with jurisdiction under Title 78A, Judiciary and Judicial](#)

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Administration, to dissolve a nonprofit corporation if it is established that:

- (a) (i) the creditor's claim has been reduced to judgment;
- (ii) the execution on the judgment has been returned unsatisfied; and
- (iii) the nonprofit corporation is insolvent; or
- (b) (i) the nonprofit corporation is insolvent; and
- (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and

owing.

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

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

(a) issue injunctions;

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

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

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

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

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

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

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

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

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



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### 16-6a-1416. Receivership or custodianship.

(1) As used in this section:

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

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

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

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

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

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

(i) all parties to the proceeding; and

(ii) any interested persons designated by the court.

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

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

(i) an individual;

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

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

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

~~[(2)]~~ (3) The court shall describe the powers and duties of the receiver or custodian in its appointing order that may be amended from time to time. Among other powers the receiver shall have the power to:

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

(i) at a public or private sale; and

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(ii) if authorized by the court; and

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

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

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

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

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

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

(a) the receiver;

(b) the custodian; or

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

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

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

(1) As used in this section:

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

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

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

(a) the court may enter a decree:

(i) dissolving the nonprofit corporation; and

(ii) specifying the effective date of the dissolution; and

(b) the clerk of the court shall deliver a certified copy of the decree to the division which shall file it accordingly.

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

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

(b) the giving of notice to:

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

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

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

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

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

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

(1) (a) A director or member may [~~petition the applicable court~~] bring ~~{an action}~~a petition in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, against a nonprofit corporation if:

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

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

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

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

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

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

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

(3) If a court orders inspection or copying of the records demanded under Subsection

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(ii) additional time as fixed by the division.

(c) The answers to the interrogatories shall be:

(i) full and complete; and

(ii) made in writing.

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

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

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

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

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

(D) any other person authorized to answer the interrogatories as the nonprofit corporation's agent.

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

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

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

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

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

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

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

(3) Each domestic or foreign nonprofit corporation that knowingly fails or refuses to answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given to the domestic or foreign nonprofit corporation by the division in accordance with Subsection

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(1) is guilty of a class C misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500.

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

(5) The attorney general may enforce this section [~~in an action brought in:~~] by bringing an action in ~~the district court in accordance with Title 78B, Chapter 3a, Venue for Civil Actions~~ a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

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

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

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

**16-10a-126. ~~{Appeal from}~~ Petition for review of division's refusal to file document.**

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

~~— (b) The }~~ the corporation's representative, may petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to compel the filing of the document.

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

(c) The [appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition] petition under Subsection (1)(a) shall include a copy

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of the document and the division's notice of refusal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) ~~[on application of any person]~~ ~~{ }~~ ~~{ }~~ upon ~~{ an action brought }~~ a petition by a person

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who participated in a call of or demand for a special meeting effective under Subsection 16-10a-702(1) if:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

(1) (a) If a demand for payment under Section 16-10a-1328 remains unresolved, the

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

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

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

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

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

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

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

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

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

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

(b) The court may appoint one or more persons as appraisers to receive evidence and

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recommend decision on the question of fair value.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) the shareholders are deadlocked in voting power and have failed, for a period that

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includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

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

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

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

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

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

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

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

(a) issue injunctions;

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

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

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

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

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

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

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

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

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

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

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

(e) After an election has been filed by the corporation or one or more shareholders, the [~~proceedings~~] action under Subsection 16-10a-1430(2) may not be discontinued or settled, nor

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may the petitioning shareholder sell or otherwise dispose of any shares of the corporation, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioning shareholders, to permit any discontinuance, settlement, sale, or other disposition.

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

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

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

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

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

(b) In allocating the petitioning shareholders' shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different share classes to the extent practicable. The court may direct that holders of a specific class or classes may not participate in the purchase. The court may not require any electing shareholder to purchase more of the shares of the corporation owned by the petitioning

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shareholder than the number of shares that the purchasing shareholder may have set forth in his election or notice of intent to participate filed with the court as the maximum number of shares he is willing to purchase.

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

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

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

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

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

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

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

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

~~[(1) (a)]~~ A foreign corporation may appeal the division's revocation of ~~its~~ the

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~~foreign corporation's~~ authority to transact business in this state to the district court ~~{}~~ of the county in this state where the last registered or principal office of the corporation was located or in Salt Lake County, ~~{}~~ within 30 days after the notice of revocation is mailed under Section 16-10a-1531. ~~{~~

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

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

~~(c)2) A foreign corporation shall file {an appeal} a petition under { this} Subsection (1) {in accordance with Title 78B, Chapter 3a, Venue for Civil Actions.~~

~~(2) The} within 30 days after the day on which the division gives notice of the revocation under Section 16-10a-1531.~~

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

(4) [The] If a petition is filed under Subsection (1), the court may summarily order the division to reinstate the authority of the foreign corporation to transact business in this state or ~~[it] the court~~ may take any other action ~~[it] the court~~ considers appropriate.

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

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

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

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



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### Judiciary and Judicial Administration.

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

(2) (a) If a corporation does not within a reasonable time allow a shareholder or director, or the shareholder's or director's agent or attorney, who complies with Subsections 16-10a-1602(2) and (3), to inspect and copy any records which ~~[he]~~ the shareholder or director is entitled to inspect or copy by this part, ~~[then upon application of the shareholder or director denied access to the records, the district court of the county in this state where the corporation's principal office is located or, if it has no principal office in this state, the district court for Salt Lake County, may]~~ the shareholder or director may ~~{bring an action against the corporation for a court to summarily order the inspection }~~ petition a court with jurisdiction under Title 78A,

### Judiciary and Judicial Administration.

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

~~(b)(c)~~ The court shall dispose of ~~[an application]~~ ~~{an action}~~ a petition under this subsection on an expedited basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) If a person required by this chapter to sign or deliver a record to the division for

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filing does not [~~do so, the district court, upon petition of an aggrieved person, may order~~] sign or deliver the record to the division for filing, the court may order, upon the petition of an aggrieved person:

- (a) the person to sign the record and deliver [~~it~~] the record to the division for filing; or
- (b) delivery of the unsigned record to the division for filing.

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

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

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

### **16-16-1203. Judicial dissolution.**

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

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

- (a) the association obtained [~~its~~] the association's articles of organization through fraud; or
- (b) the association has continued to exceed or abuse the authority conferred upon [~~it~~] the corporation by law[~~;-or~~].

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

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

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

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

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

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

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

### **16-16-1206. Winding up.**

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

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

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

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

(c) prosecute and defend actions and proceedings;

(d) transfer association property; and

(e) perform other necessary acts.

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

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

(b) the applicant establishes other good cause.

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

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

### **16-16-1210. Court proceeding.**

(1) ~~[Upon application]~~ Upon a petition by a dissolved limited cooperative association that has published a notice under Section 16-16-1209, ~~[the district court in the county where the association's principal office is located or, if the association does not have a principal office~~

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~~in this state where its designated office in this state is located,]~~ a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, may determine the amount and form of security to be provided for payment of claims against the association that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution but that, based on the facts known to the association, are reasonably anticipated to arise after the effective date of dissolution.

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

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

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

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

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

### **24-1-103. Venue.**

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

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

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

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

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

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

### **Part 4. Venue**

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

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

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

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

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

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

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

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

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

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

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

- (a) At the time the transaction is entered into it is fair to the interests of the corporation.
- (b) The transaction has, with full knowledge of its terms and of the interests involved, been approved in advance by the board or by the shareholders.
- (c) The transaction has been reported to the commissioner immediately after approval

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by the board or the shareholders.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (a) The commissioner is authorized to use the powers established for the department under this title to enforce the laws of this state not specifically preempted by the Liability Risk Retention Act of 1986, including the commissioner's administrative authority to

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investigate, issue subpoena, conduct depositions and hearings, issue orders, impose monetary penalties and seek injunctive relief.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~to~~ with jurisdiction under Title 78A, Judiciary and Judicial Administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) otherwise violates this chapter; or

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

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

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

(ii) after notice and hearing before the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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a third-degree felony.

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

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

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

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

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

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

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

(3) A person aggrieved by a failure of the commissioner to act or make a determination required by this chapter may petition [~~the Third District Court of~~ for the district court in Salt Lake County for writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.

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

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

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

(i) the date an RBC report would be required to be filed by a domestic insurer or health

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organization under this part; or

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

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

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

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

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

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

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

(A) that state's RBC statute; or

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

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

(3) The commissioner may ~~[make application to the Third District Court for Salt Lake County]~~ petition a court as permitted under Section 31A-27a-901 with respect to the liquidation of property of a foreign insurer or health organization found in this state if:

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

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

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



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### 31A-27a-105. Jurisdiction.

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

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

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

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

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

(3) (a) The receivership court, as of the commencement of a delinquency proceeding under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located, including property located outside the territorial limits of the state.

(b) The receivership court has original but not exclusive jurisdiction of all civil proceedings arising:

(i) under this chapter; or

(ii) in or related to a delinquency proceeding under this chapter.

(4) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Utah Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver if the person served:

(a) in an action resulting from or incident to a relationship with the insurer described in this Subsection (4)(a), is or has been an agent, broker, or other person who has at any time:

(i) written a policy of insurance for an insurer against which a delinquency proceeding is instituted; or

(ii) acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding is instituted;

(b) in an action on or incident to a reinsurance contract described in this Subsection (4)(b):

(i) is or has been an insurer or reinsurer who has at any time entered into the contract of

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reinsurance with an insurer against which a delinquency proceeding is instituted; or

(ii) is an intermediary, agent, or broker of or for the reinsurer, or with respect to the contract;

(c) in an action resulting from or incident to a relationship with the insurer described in this Subsection (4)(c), is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding is instituted;

(d) in an action concerning assets described in this Subsection (4)(d), is or was at the time of the institution of the delinquency proceeding against the insurer, holding assets in which the receiver claims an interest on behalf of the insurer; or

(e) in any action on or incident to the obligation described in this Subsection (4)(e), is obligated to the insurer in any way whatsoever.

(5) (a) Subject to Subsection (5)(b), service shall be made upon the person named in the petition in accordance with the Utah Rules of Civil Procedure.

(b) In lieu of service under Subsection (5)(a), upon application to the receivership court, service may be made in such a manner as the receivership court directs whenever it is satisfactorily shown by the commissioner's affidavit:

(i) in the case of a corporation, that the officers of the corporation cannot be served because they have departed from the state or have otherwise concealed themselves with intent to avoid service;

(ii) in the case of an insurer whose business is conducted, at least in part, by an attorney-in-fact, managing general agent, or other similar entity including a reciprocal, Lloyd's association, or interinsurance exchange, that the individual attorney-in-fact, managing general agent, or other entity, or its officers of the corporate attorney-in-fact cannot be served because of the individual's departure or concealment; or

(iii) in the case of a natural person, that the person cannot be served because of the person's departure or concealment.

(6) If the receivership court on motion of any party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the receivership court may enter an [appropriate] order to stay further proceedings on the action in this state.

(7) (a) Nothing in this chapter deprives a reinsurer of any contractual right to pursue

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arbitration except:

- (i) as to a claim against the estate; and
- (ii) in regard to a contract rejected by the receiver under Section 31A-27a-113.

(b) A party in arbitration may bring a claim or counterclaim against the estate, but the claim or counterclaim is subject to this chapter.

~~[(8) An action authorized by this chapter shall be brought in the Third District Court for Salt Lake County.]~~

~~[(9)]~~ (8) (a) At any time after an order is entered pursuant to Section 31A-27a-201, 31A-27a-301, or 31A-27a-401, the commissioner or receiver may transfer the case to the county of the principal office of the person proceeded against.

(b) In the event of a transfer under this Subsection ~~[(9)]~~ (8), the court in which the proceeding is commenced shall, upon application of the commissioner or receiver, direct its clerk to transmit the court's file to the clerk of the court to which the case is to be transferred.

(c) After a transfer under this Subsection ~~[(9)]~~ (8), the proceeding shall be conducted in the same manner as if ~~[it]~~ the proceeding had been commenced in the court to which the matter is transferred.

~~[(10)]~~ (9) (a) Except as provided in Subsection ~~[(10)(c)]~~ (9)(c), a person may not intervene in a liquidation proceeding in this state for the purpose of seeking or obtaining payment of a judgment, lien, or other claim of any kind.

(b) Except as provided in Subsection ~~[(10)(c)]~~ (9)(c), the claims procedure set for this chapter constitute the exclusive means for obtaining payment of claims from the liquidation estate.

(c) (i) An affected guaranty association or the affected guaranty association's representative may intervene as a party as a matter of right and otherwise appear and participate in any court proceeding concerning a liquidation proceeding against an insurer.

(ii) Intervention by an affected guaranty association or by an affected guaranty association's designated representative conferred by this Subsection ~~[(10)(c)]~~ (9)(c) may not constitute grounds to establish general personal jurisdiction by the courts of this state.

(iii) An intervening affected guaranty association or the affected guaranty association's representative are subject to the receivership court's jurisdiction for the limited purpose for which the affected guaranty association intervenes.

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~~[(11)]~~ (10) (a) Notwithstanding the other provisions of this section, this chapter does not confer jurisdiction on the receivership court to resolve coverage disputes between an affected guaranty association and those asserting claims against the affected guaranty association resulting from the initiation of a receivership proceeding under this chapter, except to the extent that the affected guaranty association otherwise expressly consents to the jurisdiction of the receivership court pursuant to a plan of rehabilitation or liquidation that resolves its obligations to covered policyholders.

(b) The determination of a dispute with respect to the statutory coverage obligations of an affected guaranty association by a court or administrative agency or body with jurisdiction in the affected guaranty association's state of domicile is binding and conclusive as to the affected guaranty association's claim in the liquidation proceeding.

~~[(12)]~~ (11) Upon the request of the receiver, the receivership court or the presiding judge of the ~~[Third District Court for Salt Lake County]~~ court with jurisdiction under Title 78A, Judiciary and Judicial Administration, may order that one judge hear all cases and controversies arising out of or related to the delinquency proceeding.

~~[(13)]~~ (12) A delinquency proceeding is exempt from any program maintained for the early closure of civil actions.

~~[(14)]~~ (13) In a proceeding, case, or controversy arising out of or related to a delinquency proceeding, to the extent there is a conflict between the Utah Rules of Civil Procedure and this chapter, the provisions of this chapter govern the proceeding, case, or controversy.

Section 49. Section **31A-27a-201** is amended to read:

### **31A-27a-201. Receivership court's seizure order.**

(1) The commissioner may ~~file~~ file in the ~~Third District Court for Salt Lake County a petition~~ petition ~~in~~ in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration:

(a) with respect to:

(i) an insurer domiciled in this state;

(ii) an unauthorized insurer; or

(iii) pursuant to Section 31A-27a-901, a foreign insurer;

(b) alleging that:

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(i) there exists grounds that would justify a court order for a formal delinquency proceeding against the insurer under this chapter; and

(ii) the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) setting forth the contents of a seizure order considered necessary by the commissioner.

(2) (a) Upon a filing under Subsection (1), the receivership court may issue the requested seizure order:

(i) immediately, ex parte, and without notice or hearing;

(ii) that directs the commissioner to take possession and control of:

(A) all or a part of the property, accounts, and records of an insurer; and

(B) the premises occupied by the insurer for transaction of the insurer's business; and

(iii) that until further order of the receivership court, enjoins the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.

(b) A person having possession or control of and refusing to deliver any of the records or assets of a person against whom a seizure order is issued under this Subsection (2) is guilty of a class B misdemeanor.

(3) (a) A petition that requests injunctive relief:

(i) shall be verified by the commissioner or the commissioner's designee; and

(ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

(b) The commissioner shall provide only the notice that the receivership court may require.

(4) (a) The receivership court shall specify in the seizure order the duration of the seizure, which shall be the time the receivership court considers necessary for the commissioner to ascertain the condition of the insurer.

(b) The receivership court may from time to time:

(i) hold a hearing that the receivership court considers desirable:

(A) (I) on motion of the commissioner;

(II) on motion of the insurer; or

(III) on its own motion; and

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(B) after the notice the receivership court considers appropriate; and

(ii) extend, shorten, or modify the terms of the seizure order.

(c) The receivership court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to commence a formal proceeding under this chapter.

(d) An order of the receivership court pursuant to a formal proceeding under this chapter vacates the seizure order.

(5) Entry of a seizure order under this section does not constitute a breach or an anticipatory breach of a contract of the insurer.

(6) (a) An insurer subject to an ex parte seizure order under this section may petition the receivership court at any time after the issuance of a seizure order for a hearing and review of the basis for the seizure order.

(b) The receivership court shall hold the hearing and review requested under this Subsection (6) not more than 15 days after the day on which the request is received or as soon thereafter as the court may allow.

(c) A hearing under this Subsection (6):

(i) may be held privately in chambers; and

(ii) shall be held privately in chambers if the insurer proceeded against requests that [it] the hearing be private.

(7) (a) If, at any time after the issuance of a seizure order, it appears to the receivership court that a person whose interest is or will be substantially affected by the seizure order did not appear at the hearing and has not been served, the receivership court may order that notice be given to the person.

(b) An order under this Subsection (7) that notice be given may not stay the effect of a seizure order previously issued by the receivership court.

(8) Whenever the commissioner makes a seizure as provided in Subsection (2), on the demand of the commissioner, it shall be the duty of the sheriff of a county of this state, and of the police department of a municipality in the state to furnish the commissioner with necessary deputies or officers to assist the commissioner in making and enforcing the seizure order.

(9) The commissioner may appoint a receiver under this section. The insurer shall pay the costs and expenses of the receiver appointed.

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Section 50. Section **31A-27a-206** is amended to read:

### **31A-27a-206. Confidentiality.**

(1) (a) Except as provided in Subsection (1)(b), in a delinquency proceeding or a judicial review under Section 31A-27a-201:

(i) all records of the insurer, department files, court records and papers, and other documents, so far as they pertain to or are a part of the record of the proceedings, are confidential; and

(ii) a clerk of the court shall hold a paper filed with the clerk in a confidential file as permitted by law.

~~[(ii) a paper filed with the clerk of the Third District Court for Salt Lake County shall be held by the clerk in a confidential file as permitted by law.]~~

(b) The items listed in Subsection (1)(a) are subject to Subsection (1)(a):

(i) except to the extent necessary to obtain compliance with an order entered in connection with the proceeding; and

(ii) unless and until:

(A) the [~~Third District Court for Salt Lake County~~] court, after hearing argument in chambers, orders otherwise;

(B) the insurer requests that the matter be made public; or

(C) the commissioner applies for an order under Section 31A-27a-207.

(2) (a) If the recipient agrees to maintain the confidentiality of the document, material, or other information, the commissioner or rehabilitator may share a document, materials, or other information in the possession, custody, or control of the department, pertaining to an insurer that is the subject of a delinquency proceeding under this chapter with:

(i) another state, federal, and international regulatory agency;

(ii) the National Association of Insurance Commissioners and its affiliates or subsidiaries;

(iii) a state, federal, and international law enforcement authority;

(iv) an auditor appointed by the receivership court in accordance with Section 31A-27a-805; or

(v) a representative of an affected guaranty association.

(b) If the domiciliary receiver believes that certain information is sensitive, the receiver

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may share that information subject to a continuation of the confidentiality obligations beyond the period allowed in Subsection (3).

(c) This section does not limit the power of the commissioner to disclose information under other applicable law.

(3) (a) A domiciliary receiver shall permit a commissioner or a guaranty association of another state to obtain a listing of policyholders and certificate holders residing in the requestor's state, including current addresses and summary policy information, if the commissioner or the guaranty association of another state agrees:

- (i) to maintain the confidentiality of the record; and
- (ii) that the record will be used only for regulatory or guaranty association purposes.

(b) Access to a record under this Subsection (3) may be limited to normal business hours.

(c) If the domiciliary receiver believes that certain information described in this Subsection (3) is sensitive and disclosure might cause a diminution in recovery, the receiver may apply for a protective order imposing additional restrictions on access.

(4) (a) The confidentiality obligations imposed by this section shall end upon the entry of an order of liquidation against the insurer, unless:

- (i) otherwise agreed to by the parties; or
- (ii) pursuant to an order of the receivership court.

(b) A continuation of confidentiality as provided in Subsection (2) does not apply to an insurer record necessary for a guaranty association to discharge its statutory responsibilities.

(5) A waiver of an applicable privilege or claim of confidentiality does not occur as a result of a disclosure, or any sharing of documents, materials, or other information, made pursuant to this section.

Section 51. Section **31A-27a-207** is amended to read:

### **31A-27a-207. Grounds for rehabilitation or liquidation.**

(1) The commissioner may ~~file {} in the Third District Court for Salt Lake County a petition~~ file a petition in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation on any one or more of the following grounds:

- (a) the insurer is impaired;



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- (b) the insurer is insolvent;
- (c) subject to Subsection (2), the insurer is about to become insolvent;
- (d) (i) the insurer neglects or refuses to comply with an order of the commissioner to make good within the time prescribed by law any deficiency;
  - (ii) if a stock company, if its capital and minimum required surplus is impaired; or
  - (iii) if a company other than a stock company, if its surplus is impaired;
- (e) the insurer, its parent company, its subsidiary, or its affiliate:
  - (i) converts, wastes, or conceals property of the insurer; or
  - (ii) otherwise improperly disposes of, dissipates, uses, releases, transfers, sells, assigns, hypothecates, or removes the property of the insurer;
- (f) the insurer is in such condition that the insurer could not meet the requirements for organization and authorization as required by law, except as to the amount of:
  - (i) the original surplus required of a stock company under Sections 31A-5-211 and 31A-8-209; and
  - (ii) the surplus required of a company other than a stock company in excess of the minimum surplus required to be maintained;
- (g) the insurer, its parent company, its subsidiary, or its affiliate:
  - (i) conceals, removes, alters, destroys, or fails to establish and maintain records and other pertinent material adequate for the determination of the financial condition of the insurer by examination under Section 31A-2-203; or
  - (ii) fails to properly administer claims or maintain claims records that are adequate for the determination of its outstanding claims liability;
- (h) at any time after the issuance of an order under Subsection 31A-2-201(4), or at the time of instituting a proceeding under this chapter, it appears to the commissioner that upon good cause shown, it is not in the best interest of the policyholders, creditors, or the public to proceed with the conduct of the business of the insurer;
  - (i) the insurer is in such condition that the further transaction of business would be hazardous financially, according to Subsection 31A-17-609(3) or otherwise, to its policyholders, creditors, or the public;
  - (j) there is reasonable cause to believe that:
    - (i) there has been:

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- (A) embezzlement from the insurer;
- (B) wrongful sequestration or diversion of the insurer's property;
- (C) forgery or fraud affecting the insurer; or
- (D) other illegal conduct in, by, or with respect to the insurer; and
- (ii) the act described in Subsection (1)(j)(i) if established would endanger assets in an amount threatening the solvency of the insurer;
- (k) control of the insurer is in a person who is:
  - (i) dishonest;
  - (ii) untrustworthy; or
  - (iii) so lacking in insurance company managerial experience or capability as to be hazardous to policyholders, creditors, or the public;
- (l) if:
  - (i) a person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director, trustee, employee, shareholder, or other person:
    - (A) refuses to be examined under oath by the commissioner concerning the insurer's affairs, whether in this state or elsewhere; or
    - (B) if examined under oath, refuses to divulge pertinent information reasonably known to the person; and
  - (ii) after reasonable notice of the facts described in Subsection (1)(l)(i), the insurer fails promptly and effectively to terminate:
    - (A) the employment or status of the person; and
    - (B) all of the person's influence on management;
- (m) after demand by the commissioner under Section 31A-2-203 or under this chapter, the insurer fails to promptly make available for examination:
  - (i) any of its own property, accounts, or records; or
  - (ii) so far as it pertains to the insurer, property, accounts, or records of:
    - (A) a subsidiary or related company within the control of the insurer; or
    - (B) a person having executive authority in the insurer;
- (n) without first obtaining the written consent of the commissioner, the insurer:
  - (i) transfers, or attempts to transfer, in a manner contrary to Section 31A-5-508 or 31A-16-103, substantially its entire property or business; or

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(ii) enters into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;

(o) the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state;

(p) within the previous five years the insurer willfully and continuously violates:

(i) its charter or articles of incorporation;

(ii) its bylaws;

(iii) an insurance law of this state; or

(iv) a valid order of the commissioner;

(q) the insurer fails to pay within 60 days after the due date:

(i) (A) an obligation to any state or any subdivision of a state; or

(B) a judgment entered in any state, if the court in which the judgment is entered has jurisdiction over the subject matter; and

(ii) except that nonpayment is not a ground until 60 days after a good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts;

(r) the insurer systematically:

(i) engages in the practice of:

(A) reaching settlements with and obtaining releases from claimants; and

(B) unreasonably delaying payment, or failing to pay the agreed-upon settlements; or

(ii) attempts to compromise with claimants or other creditors on the ground that it is financially unable to pay its claims or obligations in full;

(s) the insurer fails to file its annual report or other financial report required by statute within the time allowed by law;

(t) the board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in Section 31A-27a-104, request or consent to rehabilitation or liquidation under this chapter;

(u) (i) the insurer does not comply with its domiciliary state's requirements for issuance to it of a certificate of authority; or

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- (ii) the insurer's certificate of authority is revoked by its state of domicile; or
- (v) when authorized by Chapter 17, Part 6, Risk-Based Capital.

(2) For purposes of this section, an insurer is about to become insolvent if it is reasonably anticipated that the insurer will not have liquid assets to meet its current obligations for the next 90 days.

Section 52. Section **31A-27a-209** is amended to read:

### **31A-27a-209. Effect of order of rehabilitation or liquidation.**

(1) The filing or recording of an order of receivership with the following imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded would have imparted:

(a) the [~~Third District Court for Salt Lake County~~] court;

(b) the recorder of deeds of the county in which the principal business of the insurer is conducted; or

(c) in the case of real estate, with the recorder of deeds of the county where the property is located.

(2) The filing of a petition commencing delinquency proceedings under this chapter or the entry of an order of seizure, rehabilitation, or liquidation does not constitute a breach or an anticipatory breach of any contract or lease of the insurer.

(3) (a) The receiver may appoint one or more special deputies.

(b) A special deputy:

(i) has the powers and responsibilities of the receiver granted under this section, unless specifically limited by the receiver; and

(ii) serves at the pleasure of the receiver.

(c) The receiver may employ or contract with:

(i) legal counsel;

(ii) one or more actuaries;

(iii) one or more accountants;

(iv) one or more appraisers;

(v) one or more consultants;

(vi) one or more clerks;

(vii) one or more assistants; and

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(viii) other personnel as may be considered necessary.

(d) A special deputy or other person with whom the receiver contracts under this Subsection (3):

(i) is considered to be an agent of the commissioner only in the commissioner's capacity as receiver; and

(ii) is not considered an agent of the state.

(e) The provisions of any law governing the procurement of goods and services by the state do not apply to a contract entered into by the commissioner as receiver.

(f) The compensation of a special deputy, employee, or contractor and all expenses of taking possession of the insurer and of conducting the receivership shall be:

(i) determined by the receiver, with the approval of the receivership court in accordance with Section 31A-27a-115; and

(ii) paid out of the property of the insurer.

(g) (i) If the receiver, in the receiver's sole discretion, considers it necessary to the proper performance of the receiver's duties under this chapter, the receiver may appoint an advisory committee of policyholders, claimants, or other creditors including guaranty associations.

(ii) The committee described in this Subsection (3)(g) serves:

(A) at the pleasure of the receiver; and

(B) without compensation and without reimbursement for expenses.

(iii) The receiver or the receivership court in proceedings conducted under this chapter may not appoint any other committee of any nature.

Section 53. Section **31A-44-501** is amended to read:

### **31A-44-501. Application for court order for rehabilitation or liquidation.**

(1) The department may request that the attorney general petition [~~a district court in the state~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, or a federal bankruptcy court that has exercised jurisdiction over a provider's facility, for an order that appoints a trustee to rehabilitate or liquidate the facility if:

(a) the department determines that:

(i) the provider is financially unsound or is unable to meet the income or available cash projections described in the provider's disclosure statement; and

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(ii) the provider's ability to fully perform the provider's obligations under a continuing care contract is endangered; or

(b) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(2) A court that evaluates a petition filed under Subsection (1) regarding a provider:

(a) shall evaluate the best interests of a person that has contracted with the provider;

and

(b) may require the proceeds of a lien imposed under Section 31A-44-601 to be used to pay an entrance fee to another facility on behalf of a resident of the provider's facility.

Section 54. Section **35A-4-308** is amended to read:

### **35A-4-308. Bonds to ensure compliance.**

(1) (a) The division, whenever [it] the division considers it necessary to ensure compliance with this chapter, may require any employer, subject to the contribution imposed hereunder, to deposit with [it] the division any bond or security as the division shall determine.

(b) The bond or security may be sold by the division at public sale, if it becomes necessary, in order to recover any tax, interest, or penalty due.

(c) Notice of the sale may be served upon the employer who deposited the securities personally or by mail. If by mail, notice sent to the last-known address as the same appears in the records of the division is sufficient for purposes of this requirement.

(d) Upon the sale, the surplus, if any, above the amounts due, shall be returned to the employer who deposited the security.

(2) (a) If an employer fails to comply with Subsection (1), [~~the district court of the county in which the employer resides or in which the employer employs workers~~] a court shall, upon the commencement of a suit by the division for that purpose, enjoin the employer from further employing workers in this state or continuing in business until the employer has complied with Subsection (1).

(b) Upon filing of a suit for such purpose by the division, the court shall set a date for hearing and cause notice to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of the notice.

Section 55. Section **35A-4-314** is amended to read:

### **35A-4-314. Disclosure of information for debt collection -- Court order --**

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### Procedures -- Use of information restrictions -- Penalties.

(1) The division shall disclose to a creditor who has obtained judgment against a debtor the name and address of the last known employer of the debtor if:

(a) the judgment creditor obtains a court order requiring disclosure of the information as described in Subsection (2); and

(b) the judgment creditor completes the requirements described in Subsection (3), including entering into a written agreement with the division.

(2) (a) A court shall grant an order to disclose the information described in Subsection (1) if, under the applicable Utah Rules of Civil Procedure:

(i) the judgment creditor files a motion with the court, which includes a copy of the judgment, and serves a copy of the motion to the judgment debtor and the division;

(ii) the judgment debtor and the division have the opportunity to respond to the motion; and

(iii) the court denies or overrules any objection to disclosure in the judgment debtor's and the division's response.

(b) A court may not grant an order to disclose the information described in Subsection (1), if the court finds that the division has established that disclosure will have a negative effect on:

(i) the willingness of employers to report wage and employment information; or

(ii) the willingness of individuals to file claims for unemployment benefits.

(c) The requirements of Subsection 63G-2-202(7) and Section 63G-2-207 do not apply to information sought through a court order as described in this section.

(3) If a court order is granted in accordance with this section, a judgment creditor shall:

(a) provide to the division a copy of the order requiring the disclosure;

(b) enter into a written agreement with the division, in a form approved by the division;

(c) pay the division a reasonable fee that reflects the cost for processing the request as established by department rule; and

(d) comply with the data safeguard and security measures described in 20 C.F.R. Sec. 603.9 with respect to information received from the division under this section.

(4) If a judgment creditor complies with Subsection (3), the division shall provide the information to the judgment creditor within 14 business days after the day on which the

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creditor complies with Subsection (3).

(5) A judgment creditor may not:

(a) use the information obtained under this section for a purpose other than satisfying the judgment between the creditor and debtor; or

(b) disclose or share the information with any other person.

(6) The division may audit a judgment creditor or other party receiving information under this section for compliance with the data safeguard and security measures described in 20 C.F.R. Sec. 603.9.

(7) If a judgment creditor or other party fails to comply with the data safeguard and security measures under 20 C.F.R. Sec. 603.9, the judgment creditor or other party is subject to a civil penalty of no more than \$10,000 enforceable by the Utah Office of the Attorney General as follows:

(a) the attorney general, on the attorney general's own behalf or on behalf of the division, [~~may file an action in district court~~] may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enforce the civil penalty; and

(b) if the attorney general prevails in enforcing the civil penalty against the judgment creditor or other party:

(i) the attorney general is entitled to an award for reasonable attorney fees, court costs, and investigative expenses; and

(ii) the civil penalty shall be deposited into the special administrative expense account described in Subsection 35A-4-506(1).

Section 56. Section **48-1d-111** is amended to read:

### **48-1d-111. Signing and filing pursuant to judicial order.**

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to order:

(a) the person to sign the record;

(b) the person to deliver the record to the division for filing; or

(c) the division to file the record unsigned.

(2) If a petitioner under Subsection (1) is not the partnership or foreign limited liability



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partnership to which the record pertains, the petitioner shall make the partnership or foreign limited liability partnership a party to the action.

(3) A record filed under Subsection (1)(c) is effective without being signed.

Section 57. Section **48-1d-116** is amended to read:

### **48-1d-116. Duty of division to file -- Review of refusal to file -- Transmission of information by division.**

(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.

(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the partnership to which the statement pertains.

(3) If the division refuses to file a record, the division, not later than 15 business days after the record is delivered, shall:

- (a) return the record or notify the person that submitted the record of the refusal; and
- (b) provide a brief explanation in a record of the reason for the refusal.

(4) (a) If the division refuses to file a record, the person that submitted the record may petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to compel filing of the record.

(b) The record and the explanation of the division of the refusal to file must be attached to the petition.

(c) The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file a record does not create a presumption that the information contained in the record is correct or incorrect.

(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:

- (a) in person to the person that submitted it;
- (b) to the address of the person's registered agent;
- (c) to the principal office of the person; or
- (d) to another address the person provides to the division for delivery.

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Section 58. Section **48-1d-901** is amended to read:

### **48-1d-901. Events causing dissolution.**

A partnership is dissolved, and [its] the partnership's activities and affairs must be wound up, upon the occurrence of any of the following:

(1) in a partnership at will, the partnership has notice of a person's express will to withdraw as a partner, other than a partner that has dissociated under Subsections 48-1d-701(2) through (10), but, if the person specifies a withdrawal date later than the date the partnership had notice, on the later date;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a person's dissociation by death or otherwise under Subsections 48-1d-701(6) through (10) or wrongful dissociation under Subsection 48-1d-702(2), the affirmative vote or consent of at least half of the remaining partners to wind up the partnership's activities and affairs, for which purpose a person's rightful dissociation pursuant to Subsection 48-1d-702(2)(b)(i) constitutes the expression of that partner's consent to wind up the partnership's activities and affairs;

(b) the express consent of all the partners to wind up the partnership's activities and affairs; or

(c) the expiration of the term or the completion of the undertaking;

(3) an event or circumstance that the partnership agreement states causes dissolution;

(4) [~~on application~~] fi upon ~~an action~~ a petition brought by a partner, the entry [~~by the district court of an order~~] of a court order dissolving the partnership on the ground that:

(a) the conduct of all or substantially all the partnership's activities and affairs is unlawful;

(b) the economic purpose of the partnership is likely to be unreasonably frustrated;

(c) another partner has engaged in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(d) it is not otherwise reasonably practicable to carry on the partnership's activities and affairs in conformity with the partnership agreement;

(5) [~~on application~~] fi upon ~~an action~~ a petition brought by a transferee, the entry [~~by the district court of an order~~] of a court order dissolving the partnership on the ground that

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it is equitable to wind up the partnership's activities and affairs:

(a) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(b) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(6) the passage of 90 consecutive days during which the partnership does not have at least two partners.

Section 59. Section **48-1d-902** is amended to read:

### **48-1d-902. Winding up.**

(1) (a) A dissolved partnership shall wind up [~~its~~] the partnership's activities and affairs [~~and, except~~].

(b) Except as otherwise provided in Section 48-1d-903, [~~the partnership~~] a partnership only continues after dissolution [~~only~~] for the purpose of winding up.

(2) In winding up [~~its~~] a partnership's activities and affairs, the partnership:

(a) shall discharge the partnership's debts, obligations, and other liabilities, settle and close the partnership's activities and affairs, and marshal and distribute the assets of the partnership; and

(b) may:

(i) deliver to the division for filing a statement of dissolution stating the name of the partnership and that the partnership is dissolved;

(ii) preserve the partnership's activities and affairs and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) transfer the partnership's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the division for filing a statement of termination stating the name of the partnership and that the partnership is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) A person whose dissociation as a partner resulted in dissolution may participate in

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winding up as if still a partner, unless the dissociation was wrongful.

(4) If a dissolved partnership does not have a partner and no person has the right to participate in winding up under Subsection (3), the personal or legal representative of the last person to have been a partner may wind up the partnership's activities and affairs. If the representative does not exercise that right, a person to wind up the partnership's activities and affairs may be appointed by the consent of transferees owning a majority of the rights to receive distributions at the time the consent is to be effective. A person appointed under this Subsection (4) has the powers of a partner under Section 48-1d-904 but is not liable for the debts, obligations, and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the partnership's activities and affairs.

(5) [~~On the application of~~] ~~ff~~ Upon ~~an action~~ a petition brought by any partner or person entitled under Subsection (3) to participate in winding up, [~~the district~~] a court may order judicial supervision of the winding up of a dissolved partnership, including the appointment of a person to wind up the partnership's activities and affairs, if:

(a) the partnership does not have a partner, and within a reasonable time following the dissolution no person has been appointed under Subsection (4); or

(b) the applicant establishes other good cause.

Section 60. Section **48-1d-903** is amended to read:

### **48-1d-903. Rescinding dissolution.**

(1) A partnership may rescind [~~its~~] the partnership's dissolution, unless a statement of termination applicable to the partnership is effective or [~~the district~~] the court has entered an order under Subsection 48-1d-901(4) or (5) dissolving the partnership.

(2) Rescinding dissolution under this section requires:

(a) the affirmative vote or consent of each partner;

(b) if a statement of dissolution applicable to the partnership has been filed by the division but has not become effective, delivery to the division for filing of a statement of withdrawal under Section 48-1d-114 applicable to the statement of dissolution; and

(c) if a statement of dissolution applicable to the partnership is effective, the delivery to the division for filing of a statement of correction under Section 48-1d-115 stating that dissolution has been rescinded under this section.

(3) If a partnership rescinds [~~its~~] the partnership's dissolution:

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(a) the partnership resumes carrying on its activities and affairs as if dissolution had never occurred;

(b) subject to Subsection (3)(c), any liability incurred by the partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Section 61. Section **48-1d-909** is amended to read:

### **48-1d-909. Court proceedings.**

(1) (a) A dissolved limited liability partnership that has published a notice under Section 48-1d-908 may ~~[file an application with the district court in the county where the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, where the office of its registered agent is located,]~~ {file a }petition {in }a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the dissolved limited liability partnership, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability partnership, are reasonably expected to arise after the effective date of dissolution.

(b) Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-1d-907(3).

(2) ~~[Not]~~ No later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the dissolved limited liability partnership.

(3) (a) In any proceeding under this section, the ~~[district]~~ court may appoint a guardian ad litem to represent all claimants whose identities are unknown.

(b) The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability partnership.

(4) A dissolved limited liability partnership that provides security in the amount and form ordered by the ~~[district]~~ court under Subsection (1) satisfies the dissolved limited liability partnership's obligations with respect to claims that are contingent, have not been made known

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to the dissolved limited liability partnership, or are based on an event occurring after the effective date of dissolution, and the claims may not be enforced against a partner or transferee who receives assets in liquidation.

(5) This section applies only to a debt, obligation, or other liability incurred while a partnership was a limited liability partnership.

Section 62. Section **48-1d-1003** is amended to read:

### **48-1d-1003. Required notice or approval.**

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains [~~an appropriate order of the district court~~] a court order specifying the disposition of the property.

(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

Section 63. Section **48-1d-1310** is amended to read:

### **48-1d-1310. Purchase of interest upon death, incapacity, or disqualification of member.**

(1) Subject to this part, one or more of the following may provide for the purchase of a partner's interest in a professional services partnership upon the death, incapacity, or disqualification of the partner:

- (a) the partnership agreement; or
- (b) a private agreement.

(2) In the absence of a provision described in Subsection (1), a professional services

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partnership shall purchase the interest of a partner who is deceased, incapacitated, or no longer qualified to own an interest in the professional services partnership within 90 days after the day on which the professional services partnership is notified of the death, incapacity, or disqualification.

(3) If a professional services partnership purchases a partner's interest under Subsection (2), the professional services company shall purchase the interest at a price that is the reasonable fair market value as of the date of death, incapacity, or disqualification.

(4) If a professional services partnership fails to purchase a partner's interest as required by Subsection (2) at the end of the 90-day period described in Subsection (2), [~~one of the following may bring an action in the district court of the county in which the principal office or place of practice of the professional services partnership is located~~] the following persons may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enforce Subsection (2):

(a) the personal representative of a deceased partner;

(b) the guardian or conservator of an incapacitated partner; or

(c) the disqualified partner.

(5) A court in which an action is brought under Subsection (4) may:

(a) award the person bringing the action the reasonable fair market value of the interest; or

(b) within [~~its~~] the court's jurisdiction, order the liquidation of the professional services partnership.

(6) If a person described in Subsections (4)(a) through (c) is successful in an action under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

Section 64. Section **48-2e-204** is amended to read:

### **48-2e-204. Signing and filing pursuant to judicial order.**

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to order:

(a) the person to sign the record;

(b) the person to deliver the record to the division for filing; or

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(c) the division to file the record unsigned.

(2) If the petitioner under Subsection (1) is not the limited partnership or foreign limited partnership to which the record pertains, the petitioner shall make the limited partnership or foreign limited partnership a party to the action.

(3) A record filed under Subsection (1)(c) is effective without being signed.

Section 65. Section **48-2e-209** is amended to read:

### **48-2e-209. Duty of division to file -- Review of refusal to file -- Transmission of information by the division.**

(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.

(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing.

(3) If the division refuses to file a record, the division, not later than 15 business days after the record is delivered, shall:

- (a) return the record or notify the person that submitted the record of the refusal; and
- (b) provide a brief explanation in a record of the reason for the refusal.

(4) (a) If the division refuses to file a record, the person that submitted the record may petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to compel filing of the record.

(b) The record and the explanation of the division of the refusal to file must be attached to the petition.

(c) The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file a record does not create a presumption that the information contained in the filing is correct or incorrect.

(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:

- (a) in person to the person that submitted it;
- (b) to the address of the person's registered agent;
- (c) to the principal office of the person; or



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(d) to another address the person provides to the division for delivery.

Section 66. Section **48-2e-801** is amended to read:

### **48-2e-801. Events causing dissolution.**

(1) A limited partnership is dissolved, and ~~[its]~~ the limited partnership's activities and affairs must be wound up, upon the occurrence of any of the following:

(a) an event or circumstance that the partnership agreement states causes dissolution;

(b) the affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective;

(c) after the dissociation of a person as a general partner:

(i) if the limited partnership has at least one remaining general partner, the vote or consent to dissolve the limited partnership not later than 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective; or

(ii) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(A) consent to continue the activities and affairs of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(B) at least one person is admitted as a general partner in accordance with the consent;

(d) the passage of 90 consecutive days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner;

(e) the passage of 90 consecutive days during which the limited partnership has only one partner, unless before the end of the period:

(i) the limited partnership admits at least one person as a partner;

(ii) if the previously sole remaining partner is only a general partner, the limited partnership admits the person as a limited partner; and

(iii) if the previously sole remaining partner is only a limited partner, the limited partnership admits a person as a general partner;

(f) ~~[on application]~~ upon an action a petition brought by a partner, the entry [by

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~~the district court of an order]~~ of a court order dissolving the limited partnership on the grounds that:

(i) the conduct of all or substantially all the limited partnership's activities and affairs is unlawful; or

(ii) it is not reasonably practicable to carry on the limited partnership's activities and affairs in conformity with the partnership agreement; or

(g) the signing and filing of a statement of administrative dissolution by the division under Section 48-2e-810.

(2) If an event occurs that imposes a deadline on a limited partnership under Subsection (1) and before the limited partnership has met the requirements of the deadline, another event occurs that imposes a different deadline on the limited partnership under Subsection (1):

(a) the occurrence of the second event does not affect the deadline caused by the first event; and

(b) the limited partnership's meeting of the requirements of the first deadline does not extend the second deadline.

Section 67. Section ~~48-2e-802~~ is amended to read:

### **48-2e-802. Winding up.**

(1) (a) A dissolved limited partnership shall wind up ~~[its]~~ the limited partnership's activities and affairs~~[-and, except].~~

(b) Except as otherwise provided in Section 48-2e-803, the limited partnership only continues after dissolution [~~only~~] for the purpose of winding up.

(2) In winding up ~~[its]~~ the limited partnership's activities and affairs, the limited partnership:

(a) shall discharge the limited partnership's debts, obligations, and other liabilities, settle and close the limited partnership's activities and affairs, and marshal and distribute the assets of the limited partnership; and

(b) may:

(i) amend its certificate of limited partnership to state that the limited partnership is dissolved;

(ii) preserve the limited partnership activities, affairs, and property as a going concern

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for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) transfer the limited partnership's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the division for filing a statement of termination stating the name of the limited partnership and that the limited partnership is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) (a) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities and affairs may be appointed by the affirmative vote or consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective.

(b) A person appointed under this Subsection (3):

~~(a)~~ (i) has the powers of a general partner under Section 48-2e-804 but is not liable for the debts, obligations, and other liabilities of the limited partnership solely by reason of having or exercising those powers or otherwise acting to wind up the dissolved limited partnership's activities and affairs; and

~~(b)~~ (ii) shall deliver promptly to the division for filing an amendment to the certificate of limited partnership stating:

~~(i)~~ (A) that the limited partnership does not have a general partner;

~~(ii)~~ (B) the name and street and mailing addresses of the person; and

~~(iii)~~ (C) that the person has been appointed pursuant to this subsection to wind up the limited partnership.

~~(4) On the application of any]~~

(4) ~~{In an action}~~ Upon a petition brought by a partner, ~~[the district]~~ a court may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the limited partnership's activities and affairs, if:

(a) the limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to Subsection (3); or

(b) the applicant establishes other good cause.

Section 68. Section **48-2e-803** is amended to read:

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### 48-2e-803. Rescinding dissolution.

(1) A limited partnership may rescind ~~[its]~~ the limited partnership's dissolution, unless a statement of termination applicable to the limited partnership is effective, ~~[the district]~~ a court has entered an order under Subsection 48-2e-801(1)(f) dissolving the limited partnership, or the division has dissolved the limited partnership under Section 48-2e-810.

(2) Rescinding dissolution under this section requires:

(a) the affirmative vote or consent of each partner; and

(b) if the limited partnership has delivered to the division for filing an amendment to the certificate of limited partnership stating that the partnership is dissolved and if:

(i) the amendment is not effective, the filing by the limited partnership of a statement of withdrawal under Section 48-2e-207 applicable to the amendment; or

(ii) the amendment is effective, the delivery by the limited partnership to the division for filing of an amendment to the certificate of limited partnership stating that the dissolution has been rescinded under this section.

(3) If a limited partnership rescinds ~~[its]~~ the limited partnership's dissolution:

(a) the limited partnership resumes carrying on ~~[its]~~ the limited partnership's activities and affairs as if dissolution had never occurred;

(b) subject to Subsection (3)(c), any liability incurred by the limited partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Section 69. Section **48-2e-808** is amended to read:

### 48-2e-808. Court proceedings.

(1) (a) A dissolved limited partnership that has published a notice under Section 48-2e-807 may ~~file~~ file an application with the district court in the county where the dissolved limited partnership's principal office is located, or, if the principal office is not located in this state, where the office of its registered agent is located, ~~file~~ file a petition ~~in~~ in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the dissolved limited partnership, or are based on an event occurring after

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the effective date of dissolution but which, based on the facts known to the dissolved limited partnership, are reasonably expected to arise after the effective date of dissolution.

(b) Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-2e-807(3).

(2) [Not] No later than 10 days after the filing of an application under Subsection (1), the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the dissolved limited partnership.

(3) (a) In a proceeding brought under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown.

(b) The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited partnership.

(4) A dissolved limited partnership that provides security in the amount and form ordered by the court under Subsection (1) satisfies the dissolved limited partnership's obligations with respect to claims that are contingent, have not been made known to the dissolved limited partnership, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a partner or transferee that received assets in liquidation.

Section 70. Section **48-2e-1103** is amended to read:

### **48-2e-1103. Required notice or approval.**

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains ~~[an appropriate order of the district court]~~ a court order specifying the disposition of the property.

(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving

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entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

Section 71. Section **48-3a-204** is amended to read:

### **48-3a-204. Signing and filing pursuant to judicial order.**

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to order:

- (a) the person to sign the record;
- (b) the person to deliver the record to the division for filing; or
- (c) the division to file the record unsigned.

(2) If a petitioner under Subsection (1) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action.

(3) A record filed under Subsection (1)(c) is effective without being signed.

Section 72. Section **48-3a-209** is amended to read:

### **48-3a-209. Duty of division to file -- Review of refusal to file -- Transmission of information by division.**

(1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.

(2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.

(3) If the division refuses to file a record, the division shall, not later than 15 business days after the record is delivered:

- (a) return the record or notify the person that submitted the record of the refusal; and
- (b) provide a brief explanation in a record of the reason for the refusal.

(4) (a) If the division refuses to file a record, the person that submitted the record may

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petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to compel filing of the record.

(b) The record and the explanation of the division of the refusal to file must be attached to the petition.

(c) The court may decide the matter in a summary proceeding.

(5) The filing of or refusal to file a record does not create a presumption that the information contained in the record is correct or incorrect.

(6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:

(a) in person to the person that submitted it;

(b) to the address of the person's registered agent;

(c) to the principal office of the person; or

(d) to another address the person provides to the division for delivery.

Section 73. Section **48-3a-701** is amended to read:

### **48-3a-701. Events causing dissolution.**

A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of 90 consecutive days during which the limited liability company has no members unless:

(a) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(b) at least one person becomes a member in accordance with the consent;

(4) [~~on application by~~] if upon an action a petition brought by a member, the entry [~~by the district court of an order~~] of a court order dissolving the limited liability company on the grounds that:

(a) the conduct of all or substantially all of the limited liability company's activities and affairs is unlawful; or

(b) it is not reasonably practicable to carry on the limited liability company's activities

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and affairs in conformity with the certificate of organization and the operating agreement;

(5) ~~[on application by]~~ fi ~~upon {an action}; a petition~~ brought by a member, the entry ~~[by the district court of an order]~~ of a court order dissolving the limited liability company on the grounds that the managers or those members in control of the limited liability company:

(a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

(6) the signing and filing of a statement of administrative dissolution by the division under Subsection 48-3a-708(3).

Section 74. Section **48-3a-702** is amended to read:

### **48-3a-702. Election to purchase in lieu of dissolution.**

(1) (a) In a proceeding under Subsection 48-3a-701(5) to dissolve a limited liability company, the limited liability company may elect or, if ~~[it]~~ the limited liability company fails to elect, one or more members may elect to purchase the interest in the limited liability company owned by the applicant member at the fair market value of the interest, determined as provided in this section.

(b) An election pursuant to this Subsection (1) is irrevocable unless ~~[the district]~~ a court determines that it is equitable to set aside or modify the election.

(2) (a) An election to purchase pursuant to this section may be filed with ~~[the district]~~ a court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-3a-701(5) or at any later time as the ~~[district]~~ court in ~~[its]~~ the court's discretion may allow.

(b) If the limited liability company files an election with ~~[the district]~~ a court within the 90-day period, or at any later time allowed by the ~~[district]~~ court, to purchase the interest in the limited liability company owned by the applicant member, the limited liability company shall purchase the interest in the manner provided in this section.

(3) (a) If the limited liability company does not file an election with ~~[the district]~~ a court within the time period, but an election to purchase the interest in the limited liability company owned by the applicant member is filed by one or more members within the time period, the limited liability company shall, within 10 days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the ~~[district]~~ court of an election by members to purchase the interest in the limited liability



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company owned by the applicant member as provided in this section, give written notice of the election to purchase to all members of the limited liability company, other than the applicant member.

(b) The notice shall state the name and the percentage interest in the limited liability company owned by the applicant member and the name and the percentage interest in the limited liability company owned by each electing member.

(c) The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase the interest in the limited liability company in accordance with this section and of the date by which any notice of intent to participate must be filed with the [district] court.

(4) Members who wish to participate in the purchase of the interest in the limited liability company of the applicant member must file notice of their intention to join in the purchase by electing members no later than 30 days after the effective date of the limited liability company's notice of their right to join in the election to purchase.

(5) All members who have filed with the [district] court an election or notice of their intention to participate in the election to purchase the interest in the limited liability company of the applicant member thereby become irrevocably obligated to participate in the purchase of the interest from the applicant member upon the terms and conditions of this section, unless the [district] court otherwise directs.

(6) After an election has been filed by the limited liability company or one or more members, the proceedings under Subsection 48-3a-701(5) may not be discontinued or settled, nor may the applicant member sell or otherwise dispose of the applicant member's interest in the limited liability company, unless the [district] court determines that it would be equitable to the limited liability company and the members, other than the applicant member, to permit any discontinuance, settlement, sale, or other disposition.

(7) If, within 60 days after the earlier of the limited liability company filing of an election to purchase the interest in the limited liability company of the applicant member or the limited liability company's mailing of a notice to its members of the filing of an election by the members to purchase the interest in the limited liability company of the applicant member, the applicant member and electing limited liability company or members reach agreement as to the fair market value and terms of the purchase of the applicant member's interest, the [district]

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court shall enter an order directing the purchase of the applicant member's interest, upon the terms and conditions agreed to by the parties.

(8) If the parties are unable to reach an agreement as provided for in Subsection (7), upon application of any party, the [district] court shall stay the proceedings under Subsection 48-3a-701(5) and determine the fair market value of the applicant member's interest in the limited liability company as of the day before the date on which the petition under Subsection 48-3a-701(5) was filed or as of any other date the [district] court determines to be appropriate under the circumstances and based on the factors the [district] court determines to be appropriate.

(9) (a) Upon determining the fair market value of the interest in the limited liability company of the applicant member, the [district] court shall enter an order directing the purchase of the interest in the limited liability company upon terms and conditions the [district] court determines to be appropriate.

(b) The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the [district] court, and an allocation of the interest in the limited liability company among members if the interest in the limited liability company is to be purchased by members.

(10) (a) In allocating the applicant member's interest in the limited liability company among holders of different classes of members, the [district] court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable.

(b) The [district] court may direct that holders of a specific class or classes may not participate in the purchase.

(c) The [district] court may not require any electing member to purchase more of the interest in the limited liability company owned by the applicant member than the percentage interest that the purchasing member may have set forth in the purchasing member's election or notice of intent to participate filed with the [district] court.

(11) (a) Interest may be allowed at the rate and from the date determined by the [district] court to be equitable.

(b) However, if the [district] court finds that the refusal of the applicant member to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be

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allowed.

(12) If the [district] court finds that the applicant member had probable ground for relief under Subsection 48-3a-701(5), the [district] court may award to the applicant member reasonable fees and expenses of counsel and experts employed by the applicant member.

(13) (a) Upon entry of an order under Subsection (7) or (9), the [district] court shall dismiss the petition to dissolve the limited liability company under Subsection 48-3a-701(5) and the applicant member shall no longer have any rights or status as a member of the limited liability company, except the right to receive the amounts awarded to the applicant member by the [district] court.

(b) The award is enforceable in the same manner as any other judgment.

(14) (a) The purchase ordered pursuant to Subsection (9) shall be made within 10 days after the date the order becomes final, unless before that time the limited liability company files with the [district] court a notice of [its] the limited liability company's intention to file a statement of dissolution.

(b) The statement of dissolution must then be adopted and filed within 60 days after notice.

(15) (a) Upon filing of a statement of dissolution, the limited liability company is dissolved and shall be wound up pursuant to Section 48-3a-703, and the order entered pursuant to Subsection (9) is no longer of any force or effect.

(b) However, the [district] court may award the applicant member reasonable fees and expenses in accordance with Subsection (12).

(c) The applicant member may continue to pursue any claims previously asserted on behalf of the limited liability company.

(16) Any payment by the limited liability company pursuant to an order under Subsection (7) or (9), other than an award of fees and expenses pursuant to Subsection (12), is subject to the provisions of Sections 48-3a-405 and 48-3a-406.

Section 75. Section **48-3a-703** is amended to read:

### **48-3a-703. Winding up.**

(1) (a) A dissolved limited liability company shall wind up [its] the limited liability company's activities and affairs [~~and, except~~].

(b) Except as otherwise provided in Section 48-3a-704, the limited liability company

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only continues after dissolution [~~only~~] for the purpose of winding up.

(2) In winding up [its] the limited liability company's activities and affairs, a limited liability company:

(a) shall discharge the limited liability company's debts, obligations, and other liabilities, settle and close the limited liability company's activities and affairs, and marshal and distribute the assets of the limited liability company; and

(b) may:

(i) deliver to the division for filing a statement of dissolution stating the name of the limited liability company and that the limited liability company is dissolved;

(ii) preserve the limited liability company activities, affairs, and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) transfer the limited liability company's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the division for filing a statement of termination stating the name of the limited liability company and that the limited liability company is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) (a) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the limited liability company.

(b) If the person does so, the person has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1).

(4) If the legal representative under Subsection (3) declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this Subsection (4):

(a) has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1); and

(b) shall promptly deliver to the division for filing an amendment to the limited liability company's certificate of organization stating:

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- (i) that the limited liability company has no members;
- (ii) the name and street and mailing addresses of the person; and
- (iii) that the person has been appointed pursuant to this subsection to wind up the limited liability company.

(5) A [~~district~~] court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the limited liability company's activities and affairs:

(a) [~~on application of a member, if the applicant~~] ~~fi} upon fan action brought} a petition~~ by a member if the member establishes good cause;

(b) [~~on the application of a transferee;~~] ~~fi} upon fan action brought} a petition~~ by a transferee if:

- (i) the company does not have any members;
- (ii) the legal representative of the last person to have been a member declines or fails to wind up the limited liability company's activities; and
- (iii) within a reasonable time following the dissolution a person has not been appointed pursuant to Subsection (4); or

(c) in connection with a proceeding under Subsection 48-3a-701(4) or (5).

Section 76. Section **48-3a-704** is amended to read:

### **48-3a-704. Rescinding dissolution.**

(1) A limited liability company may rescind [~~its~~] the limited liability company's dissolution, unless a statement of termination applicable to the limited liability company is effective, [~~the district court~~] a court has entered an order under Subsection 48-3a-701(4) or (5) dissolving the limited liability company, or the division has dissolved the limited liability company under Section 48-3a-708.

(2) Rescinding dissolution under this section requires:

- (a) the consent of each member;
- (b) if a statement of dissolution applicable to the limited liability company has been filed by the division but has not become effective, the delivery to the division for filing of a statement of withdrawal under Section 48-3a-207 applicable to the statement of dissolution; and

(c) if a statement of dissolution applicable to the limited liability company is effective,

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the delivery to the division for filing of a statement of correction under Section 48-3a-208 stating that dissolution has been rescinded under this section.

(3) If a limited liability company rescinds its dissolution:

(a) the limited liability company resumes carrying on its activities and affairs as if dissolution had never occurred;

(b) subject to Subsection (3)(c), any liability incurred by the limited liability company after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Section 77. Section **48-3a-707** is amended to read:

### **48-3a-707. Court proceedings.**

(1) (a) A dissolved limited liability company that has published a notice under Section 48-3a-706 may ~~[file an application with district court in the county where the dissolved limited liability company's principal office is located, or, if the principal office is not located in this state, where the office of its registered agent is located,]~~ {file a }petition {in }a court with jurisdiction under Title 78A Judiciary and Judicial Administration, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability company, are reasonably expected to arise after the effective date of dissolution.

(b) Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-3a-706(3).

(2) ~~[Not]~~ No later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the limited liability company.

(3) (a) In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown.

(b) The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

(4) A dissolved limited liability company that provides security in the amount and form

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ordered by the court under Subsection (1) satisfies the limited liability company's obligations with respect to claims that are contingent, have not been made known to the limited liability company, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member or transferee that received assets in liquidation.

Section 78. Section **48-3a-1003** is amended to read:

### **48-3a-1003. Required notice or approval.**

(1) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(2) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains [~~an appropriate order of the district court~~] a court order specifying the disposition of the property.

(3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

Section 79. Section **48-3a-1111** is amended to read:

### **48-3a-1111. Purchase of interest upon death, incapacity, or disqualification of member.**

(1) Subject to this part, one or more of the following may provide for the purchase of a member's interest in a professional services company upon the death, incapacity, or disqualification of the member:

- (a) the certificate of organization;
- (b) the operating agreement; or
- (c) a private agreement.

(2) In the absence of a provision described in Subsection (1), a professional services

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company shall purchase the interest of a member who is deceased, incapacitated, or no longer qualified to own an interest in the professional services company within 90 days after the day on which the professional services company is notified of the death, incapacity, or disqualification.

(3) If a professional services company purchases a member's interest under Subsection (2), the professional services company shall purchase the interest at a price that is the reasonable fair market value as of the date of death, incapacity, or disqualification.

(4) If a professional services company fails to purchase a member's interest as required by Subsection (2) at the end of the 90-day period described in Subsection (2), [~~one of the following may bring an action in the district court of the county in which the principal office or place of practice of the professional services company is located~~] the following persons may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enforce Subsection (2):

- (a) the personal representative of a deceased member;
- (b) the guardian or conservator of an incapacitated member; or
- (c) the disqualified member.

(5) A court in which an action is brought under Subsection (4) may:

- (a) award the person bringing the action the reasonable fair market value of the interest; or
- (b) within [~~its~~] the court's jurisdiction, order the liquidation of the professional services company.

(6) If a person described in Subsections (4)(a) through (c) is successful in an action under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

Section 80. Section **57-8-44** is amended to read:

**57-8-44. Lien in favor of association of unit owners for assessments and costs of collection.**

(1) (a) Except as provided in Section 57-8-13.1, an association of unit owners has a lien on a unit for:

- (i) an assessment;
- (ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:



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(A) court costs and reasonable attorney fees;

(B) late charges;

(C) interest; and

(D) any other amount that the association of unit owners is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and

(iii) a fine that the association of unit owners imposes against a unit owner in accordance with Section 57-8-37, if:

(A) the time for appeal described in Subsection 57-8-37(5) has expired and the unit owner did not file an appeal; or

(B) the unit owner timely filed an appeal under Subsection 57-8-37(5) and ~~[the district]~~ a court issued a final order upholding a fine imposed under Subsection 57-8-37(1).

(b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).

(2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association of unit owners otherwise provides in a notice of assessment.

(3) An unpaid assessment or fine accrues interest at the rate provided:

(a) in Subsection 15-1-1(2); or

(b) in the governing documents, if the governing documents provide for a different interest rate.

(4) A lien under this section has priority over each other lien and encumbrance on a unit except:

(a) a lien or encumbrance recorded before the declaration is recorded;

(b) a first or second security interest on the unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the association of unit owners; or

(c) a lien for real estate taxes or other governmental assessments or charges against the unit.

(5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.

(6) Unless the declaration provides otherwise, if two or more associations of unit

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owners have liens for assessments on the same unit, the liens have equal priority, regardless of when the liens are created.

Section 81. Section **57-8a-301** is amended to read:

**57-8a-301. Lien in favor of association for assessments and costs of collection.**

(1) (a) Except as provided in Section 57-8a-105, an association has a lien on a lot for:

(i) an assessment;

(ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:

(A) court costs and reasonable attorney fees;

(B) late charges;

(C) interest; and

(D) any other amount that the association is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and

(iii) a fine that the association imposes against a lot owner in accordance with Section 57-8a-208, if:

(A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot owner did not file an appeal; or

(B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and [~~the district~~] a court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).

(b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).

(2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association otherwise provides in a notice of assessment.

(3) An unpaid assessment or fine accrues interest at the rate provided:

(a) in Subsection 15-1-1(2); or

(b) in the declaration, if the declaration provides for a different interest rate.

(4) A lien under this section has priority over each other lien and encumbrance on a lot except:

(a) a lien or encumbrance recorded before the declaration is recorded;

(b) a first or second security interest on the lot secured by a mortgage or trust deed that

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is recorded before a recorded notice of lien by or on behalf of the association; or

(c) a lien for real estate taxes or other governmental assessments or charges against the lot.

(5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.

(6) Unless the declaration provides otherwise, if two or more associations have liens for assessments on the same lot, the liens have equal priority, regardless of when the liens are created.

Section 82. Section **57-17-5** is amended to read:

**57-17-5. Failure to return deposit or prepaid rent or to give required notice -- Recovery of deposit, penalty, costs, and attorney fees.**

(1) If an owner or the owner's agent fails to comply with the requirements described in Subsection 57-17-3(5), the renter may:

(a) recover from the owner:

(i) if the owner or the owner's agent failed to timely return the balance of the renter's deposit, the full deposit;

(ii) if the owner or the owner's agent failed to timely return the balance of the renter's prepaid rent, the full amount of the prepaid rent; and

(iii) a civil penalty of \$100; and

(b) file an action [~~in district court~~] to enforce compliance with the provisions of this section.

(2) In an action under Subsection (1)(b), the court shall award costs and attorney fees to the prevailing party if the court determines that the opposing party acted in bad faith.

(3) A renter is not entitled to relief under this section if the renter fails to serve a notice in accordance with Subsection 57-17-3(3).

(4) This section does not preclude an owner or a renter from recovering other damages to which the owner or the renter is entitled.

Section 83. Section **57-19-20** is amended to read:

**57-19-20. Injunctive relief -- Cease and desist order.**

(1) Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, and that it

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would be in the public interest to stop those acts or practices, the director may either:

- (a) seek injunctive relief as provided in Rule 65A, Utah Rules of Civil Procedure; or
- (b) issue an administrative cease and desist order.

(2) If an administrative cease and desist order is issued pursuant to Subsection (1), the person upon whom the order is served may, within 10 days after receiving the order, request that a hearing be held before an administrative law judge. If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. Pending the hearing, the order remains in effect.

(3) (a) If, at the hearing, a finding is made that there has been a violation of this chapter, the director, with the concurrence of the executive director, may issue an order making the cease and desist order permanent.

(b) If no hearing is requested, and if the person fails to cease the act or practice, or after discontinuing the act or practice again commences [it] the act or practice, the director shall [~~file suit in the district court of the county in which the act or practice occurred, or where the person resides or carries on business;~~] bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enjoin and restrain the person from violating this chapter.

(4) (a) Whether or not the director has issued a cease and desist order, the attorney general, in the name of the state or of the director, may bring an action [~~in any court of competent jurisdiction~~] in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enjoin any act or practice constituting a violation of any provision of this chapter, and to enforce compliance with this chapter or any rule or order under this chapter.

(b) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

Section 84. Section **57-21-11** is amended to read:

### **57-21-11. Relief granted -- Civil penalties -- Enforcement of final order.**

(1) Under Sections 57-21-9 and 57-21-10, if the director, presiding officer, commissioner, Appeals Board, or court finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, the director, presiding officer, commissioner, Appeals Board, or court may order, as considered appropriate:

- (a) the respondent to cease any discriminatory housing practice;

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(b) actual damages, reasonable attorneys' fees and costs to the aggrieved person; and  
(c) any permanent or temporary injunction, temporary restraining order, or other appropriate order.

(2) In addition to the relief granted to an aggrieved person under Subsection (1), in order to vindicate the public interest, the director, presiding officer, or court may also assess civil penalties against the respondent in an amount not exceeding:

(a) \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(b) \$25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or

(c) \$50,000 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this complaint.

(3) The time periods in Subsections (2)(b) and (c) may be disregarded if the acts constituting the discriminatory housing practice are committed by the same natural person who has previously been adjudged to have committed a discriminatory housing practice.

(4) The division may ~~file a petition in a district court of competent jurisdiction~~ file a petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for:

(a) the enforcement of a final department order; and  
(b) for any appropriate temporary relief or restraining order necessary for the enforcement of a final commission order.

Section 85. Section **57-22-6** is amended to read:

### **57-22-6. Renter remedies for deficient condition of residential rental unit.**

(1) As used in this section:

(a) "Corrective period" means:

(i) for a standard of habitability, three calendar days; and

(ii) for a requirement imposed by a rental agreement, 10 calendar days.

(b) "Deficient condition" means a condition of a residential rental unit that:

(i) violates a standard of habitability or a requirement of the rental agreement; and

(ii) is not caused by:

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- (A) the renter, the renter's family, or the renter's guest or invitee; and
- (B) a use that would violate:
  - (I) the rental agreement; or
  - (II) a law applicable to the renter's use of the residential rental unit.
- (c) "Notice of deficient condition" means the notice described in Subsection (2).
- (d) "Rent abatement remedy" means the remedy described in Subsection (4)(a)(i).
- (e) "Renter remedy" means:
  - (i) a rent abatement remedy; or
  - (ii) a repair and deduct remedy.
- (f) "Repair and deduct remedy" means the remedy described in Subsection (4)(a)(ii).
- (g) "Standard of habitability" means a standard:
  - (i) relating to the condition of a residential rental unit; and
  - (ii) that an owner is required to ensure that the residential rental unit meets as required under Subsection 57-22-3(1) or Subsection 57-22-4(1)(a) or (b)(i), (ii), or (iii).

(2) (a) If a renter believes that the renter's residential rental unit has a deficient condition, the renter may give the owner written notice as provided in Subsection (2)(b).

- (b) A notice under Subsection (2)(a) shall:
  - (i) describe each deficient condition;
  - (ii) state that the owner has the corrective period, stated in terms of the applicable number of days, to correct each deficient condition;
  - (iii) state the renter remedy that the renter has chosen if the owner does not, within the corrective period, take substantial action toward correcting each deficient condition;
  - (iv) provide the owner permission to enter the residential rental unit to make corrective action; and
  - (v) be served on the owner as provided in:
    - (A) Section 78B-6-805; or
    - (B) the rental agreement.

(3) (a) As used in this Subsection (3), "dangerous condition" means a deficient condition that poses a substantial risk of:

- (i) imminent loss of life; or
- (ii) significant physical harm.

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(b) If a renter believes that the renter's residential rental unit has a dangerous condition, the renter may notify the owner of the dangerous condition by any means that is reasonable under the circumstances.

(c) An owner shall:

(i) within 24 hours after receiving notice under Subsection (3)(b) of a dangerous condition, commence remedial action to correct the dangerous condition; and

(ii) diligently pursue remedial action to completion.

(d) Notice under Subsection (3)(b) of a dangerous condition does not constitute a notice of deficient condition, unless the notice also meets the requirements of Subsection (2).

(4) (a) Subject to Subsection (4)(b), if an owner fails to take substantial action, before the end of the corrective period, toward correcting a deficient condition described in a notice of deficient condition:

(i) if the renter chose the rent abatement remedy in the notice of deficient condition:

(A) the renter's rent is abated as of the date of the notice of deficient condition to the owner;

(B) the rental agreement is terminated;

(C) the owner shall immediately pay to the renter:

(I) the entire security deposit that the renter paid under the rental agreement; and

(II) a prorated refund for any prepaid rent, including any rent the renter paid for the period after the date on which the renter gave the owner the notice of deficient condition; and

(D) the renter shall vacate the residential rental unit within 10 calendar days after the expiration of the corrective period; or

(ii) if the renter chose the repair and deduct remedy in the notice of deficient condition, and subject to Subsection (4)(c), the renter:

(A) may:

(I) correct the deficient condition described in the notice of deficient condition; and

(II) deduct from future rent the amount the renter paid to correct the deficient condition, not to exceed an amount equal to two months' rent; and

(B) shall:

(I) maintain all receipts documenting the amount the renter paid to correct the deficient condition; and

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(II) provide a copy of those receipts to the owner within five calendar days after the beginning of the next rental period.

(b) A renter is not entitled to a renter remedy if the renter is not in compliance with all requirements under Section 57-22-5.

(c) (i) If a residential rental unit is not fit for occupancy, an owner may:

(A) determine not to correct a deficient condition described in a notice of deficient condition; and

(B) terminate the rental agreement.

(ii) If an owner determines not to correct a deficient condition and terminates the rental agreement under Subsection (4)(c)(i):

(A) the owner shall:

(I) notify the renter in writing no later than the end of the corrective period; and

(II) within 10 calendar days after the owner terminates the rental agreement, pay to the renter:

(Aa) any prepaid rent, prorated as provided in Subsection (4)(c)(ii)(B); and

(Bb) any deposit due the renter;

(B) the rent shall be prorated to the date the owner terminates the rental agreement under Subsection (4)(c)(i); and

(C) the renter may not be required to vacate the residential rental unit sooner than 10 calendar days after the owner notifies the renter under Subsection (4)(c)(ii)(A)(I).

(5) (a) After the corrective period expires, a renter may bring [~~an action in district court~~] an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enforce the renter remedy that the renter chose in the notice of deficient condition.

(b) In an action under Subsection (5)(a), the court shall endorse on the summons that the owner is required to appear and defend the action within three business days.

(c) If, in an action under Subsection (5)(a), the court finds that the owner unjustifiably refused to correct a deficient condition or failed to use due diligence to correct a deficient condition, the renter is entitled to any damages, in addition to the applicable renter remedy.

(d) An owner who disputes that a condition of the residential rental unit violates a requirement of the rental agreement may file a counterclaim in an action brought against the



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owner under Subsection (5)(a).

(6) An owner may not be held liable under this chapter for a claim for mental suffering or anguish.

(7) In an action under this chapter, the court may award costs and reasonable attorney fees to the prevailing party.

Section 86. Section **57-23-7** is amended to read:

### **57-23-7. Investigatory powers and proceedings of division.**

(1) The division may:

(a) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order made by the division under this chapter; and

(b) require or permit any person to file a statement in writing, under oath or otherwise as the division determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this chapter:

(a) the division may administer oaths or affirmations; and

(b) upon its own motion or upon the request of any party, the division may:

(i) subpoena witnesses;

(ii) compel their attendance;

(iii) take evidence; and

(iv) require the production of any matter which is relevant to the investigation, including:

(A) the existence, description, nature, custody, condition and location of any books, documents, or other tangible records;

(B) the identity and location of persons having knowledge of relevant facts; or

(C) any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure of any person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected by the subpoena or information sought to be discovered under the subpoena, the division may [~~apply to the district court~~] petition a court with jurisdiction under Title 78A, Judiciary and Judicial

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Administration, for an order compelling compliance.

Section 87. Section **57-23-8** is amended to read:

### **57-23-8. Enforcement powers of division -- Cease and desist orders.**

(1) (a) If the director has reason to believe that any person has been or is engaging in conduct violating this chapter, or has violated any lawful order or rule of the division, the director shall issue and serve upon the person a cease and desist order. The director may also order the person to take whatever affirmative actions the director determines to be necessary to carry out the purposes of this chapter.

(b) The person served with an order under Subsection (1)(a) may request an adjudicative proceeding within 10 days after receiving the order. The cease and desist order remains in effect pending the hearing.

(c) The division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, if the person served requests a hearing.

(2) (a) After the hearing the director may issue a final order making the cease and desist order permanent if the director finds there has been a violation of this chapter.

(b) If no hearing is requested and the person served does not obey the director's order, the director may ~~[file suit]~~ bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter. ~~[The action shall be filed in the district court in the county in which the conduct occurred, where the person served with the cease and desist order either resides or carries on business.]~~

(3) The remedies and action provided in this section are not exclusive but are in addition to any other remedies or actions available under Section 57-23-10.

Section 88. Section **57-29-303** is amended to read:

### **57-29-303. Investigatory powers and proceedings of division.**

(1) The division may:

(a) conduct a public or private investigation to determine whether a person has violated or is about to violate a provision of this chapter; and

(b) require or allow a person to file a written statement with the division that relates to the facts and circumstances concerning a matter to be investigated.

(2) For the purpose of an investigation or proceeding under this chapter, the division

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may:

- (a) administer oaths or affirmations; and
- (b) upon the division's own initiative or upon the request of any party:
  - (i) subpoena a witness;
  - (ii) compel a witness's attendance;
  - (iii) take evidence; or
  - (iv) require the production, within 10 business days, of any information or item that is

relevant to the investigation, including:

- (A) the existence, description, nature, custody, condition, and location of any books, electronic records, documents, or other tangible records;
- (B) the identity and location of any person who has knowledge of relevant facts; or
- (C) any other information or item that is reasonably calculated to lead to the discovery of material evidence.

(3) If a person fails to obey a subpoena or other request made in accordance with this section, the division may ~~[file an action in district court]~~ {file a }petition {in }a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for an order compelling compliance.

Section 89. Section **57-29-304** is amended to read:

### **57-29-304. Enforcement.**

(1) (a) If the director believes that a person has been or is engaging in conduct that violates this chapter, the director:

- (i) shall issue and serve upon the person a cease and desist order; and
- (ii) may order the person to take any action necessary to carry out the purposes of this chapter.

(b) (i) A person served with an order under Subsection (1)(a) may request a hearing within 10 days after the day on which the person is served.

(ii) (A) If a person requests a hearing in accordance with Subsection (1)(b)(i), the director shall schedule a hearing to take place no more than 30 days after the day on which the director receives the request.

(B) The cease and desist order remains in effect pending the hearing.

(iii) If the director fails to schedule a hearing in accordance with Subsection

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(1)(b)(ii)(A), the cease and desist order is vacated.

(c) The division shall conduct a hearing described in Subsection (1)(b) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) After a hearing described in Subsection (1)(b):

(a) if the director finds that the person violated this chapter, the director may issue a final order making the cease and desist order permanent; or

(b) if the director finds that the person did not violate this chapter, the director shall vacate the cease and desist order.

(3) If a person served with an order under Subsection (1)(a) does not request a hearing and the person fails to comply with the director's order, the director may [~~file suit in district court~~] bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter.

(4) The remedies and action provided in this section are not exclusive but are in addition to any other remedies or actions available under Section 57-29-305.

Section 90. Section **61-1-20** is amended to read:

### **61-1-20. Enforcement.**

(1) Whenever it appears to the director that a person has engaged, is engaging, or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, in addition to specific powers granted in this chapter:

(a) the director may issue an order directing the person to appear before the commission and show cause why an order should not be issued directing the person to cease and desist from engaging in the act or practice, or doing an act in furtherance of the activity;

(b) the order to show cause shall state the reasons for the order and the date of the hearing;

(c) the director shall promptly serve a copy of the order to show cause upon a person named in the order;

(d) the commission shall hold a hearing on the order to show cause no sooner than 10 business days after the order is issued;

(e) after a hearing, the commission may:

(i) issue an order to cease and desist from engaging in an act or practice constituting a

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violation of this chapter or a rule or order under this chapter;

(ii) impose a fine in an amount determined after considering the factors set forth in Section 61-1-31;

(iii) order disgorgement;

(iv) order restitution;

(v) order rescission;

(vi) bar or suspend that person from associating with a licensed broker-dealer or investment adviser in this state; and

(vii) impose a combination of sanctions in this Subsection (1)(e).

(2) (a) The director may bring an action in the appropriate [~~district~~] court of this state or the appropriate court of another state to enjoin an act or practice and to enforce compliance with this chapter or a rule or order under this chapter.

(b) Upon a proper showing in an action brought under this section, the court may:

(i) issue a permanent or temporary, prohibitory or mandatory injunction;

(ii) issue a restraining order or writ of mandamus;

(iii) enter a declaratory judgment;

(iv) appoint a receiver or conservator for the defendant or the defendant's assets;

(v) order disgorgement;

(vi) order rescission;

(vii) order restitution;

(viii) impose a fine in an amount determined after considering the factors set forth in Section 61-1-31; and

(ix) enter any other relief the court considers just.

(c) The court may not require the division to post a bond in an action brought under this Subsection (2).

(3) An order issued under Subsection (1) shall be accompanied by written findings of fact and conclusions of law.

(4) When determining the severity of a sanction to be imposed under this section, the commission or court shall consider whether:

(a) the person against whom the sanction is to be imposed exercised undue influence;

or

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(b) the person against whom the sanction is imposed under this section knows or should know that an investor in the investment that is the grounds for the sanction is a vulnerable adult.

Section 91. Section **61-1-105** is amended to read:

### **61-1-105. Remedies for employee bringing action.**

(1) As used in this section, "actual damages" means damages for injury or loss caused by a violation of Section 61-1-104.

(2) (a) An employee who alleges a violation of Section 61-1-104 may bring ~~[a civil]~~ an action for injunctive relief, actual damages, or both, in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

(b) An employee may not bring ~~[a civil]~~ an action under this section more than:

(i) four years after the day on which the violation of Section 61-1-104 occurs; or

(ii) two years after the date when facts material to the right of action are known or reasonably should be known by the employee alleging a violation of Section 61-1-104.

~~[(3) An employee may bring an action under this section in the district court for the county where:]~~

~~[(a) the alleged violation occurs;]~~

~~[(b) the employee resides; or]~~

~~[(c) the person against whom the civil complaint is filed resides or has a principal place of business.]~~

~~[(4)]~~ (3) To prevail in an action brought under this section, an employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on the employee's behalf, engaged or intended to engage in an activity protected under Section 61-1-104.

~~[(5)]~~ (4) A court may award as relief for an employee prevailing in an action brought under this section:

(a) reinstatement with the same fringe benefits and seniority status that the individual would have had, but for the adverse action;

(b) two times the amount of back pay otherwise owed to the individual, with interest;

(c) compensation for litigation costs, expert witness fees, and reasonable attorney fees;

(d) actual damages; or

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(e) any combination of the remedies listed in this Subsection [~~(5)~~] (4).

[~~(6)~~] (5) (a) An employer may file a counter claim against an employee who files a civil action under this section seeking attorney fees and costs incurred by the employer related to the action filed by the employee and the counter claim.

(b) The court may award an employer who files a counter claim under this Subsection [~~(6)~~] (5) attorney fees and costs if the court finds that:

(i) there is no reasonable basis for the civil action filed by the employee; or

(ii) the employee is not protected under Section 61-1-104 because:

(A) the employee engaged in an act described in Subsections 61-1-104(2)(a) through

(c); or

(B) Subsection 61-1-104(2)(d) applies.

Section 92. Section **61-2-203** is amended to read:

### **61-2-203. Adjudicative proceedings -- Citation authority.**

(1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding under a chapter the division administers.

(2) The division may initiate an adjudicative proceeding through:

(a) a notice of agency action; or

(b) a notice of formal or informal proceeding.

(3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not apply to the issuance of a citation under Subsection (4), unless a licensee or another person authorized by law to contest the validity or correctness of a citation commences an adjudicative proceeding contesting the citation.

(4) In addition to any other statutory penalty for a violation related to an occupation or profession regulated under this title, the division may issue a citation to a person who, upon inspection or investigation, the division concludes to have violated:

(a) Subsection 61-2c-201(1), which requires licensure;

(b) Subsection 61-2c-201(4), which requires licensure;

(c) Subsection 61-2c-205(3), which requires notification of a change in specified information regarding a licensee;

(d) Subsection 61-2c-205(4), which requires notification of a specified legal action;

(e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division

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within the required time period;

(f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the division;

(g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;

(h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading advertising;

(i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed work if unlicensed;

(j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a quarterly report of condition;

(k) Subsection 61-2e-201(1), which requires registration;

(l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;

(m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;

(n) Subsection 61-2e-401(1)(c), which prohibits failure to respond to a division request;

(o) Subsection 61-2f-201(1), which requires licensure;

(p) Subsection 61-2f-206(1), which requires registration;

(q) Subsection 61-2f-301(1), which requires notification of a specified legal action;

(r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;

(s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated with a principal broker;

(t) Subsection 61-2f-401(9), which prohibits failing to keep specified records and prohibits failing to make the specified records available for division inspection;

(u) Subsection 61-2f-401(12), which prohibits false, misleading, or deceptive advertising;

(v) Subsection 61-2f-401(18), which prohibits failing to respond to a division request;

(w) Subsection 61-2g-301(1), which requires licensure;

(x) Subsection 61-2g-405(3), which requires making records required to be maintained available to the division;

(y) Subsection 61-2g-501(2)(c), which requires a person to respond to a division request in an investigation within 10 days after the day on which the request is served;



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- (z) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;
  - (aa) a rule made pursuant to any Subsection listed in this Subsection (4);
  - (bb) an order of the division; or
  - (cc) an order of the commission or board that oversees the person's profession.
- (5) (a) In accordance with Subsection (10), the division may assess a fine against a person for a violation of a provision listed in Subsection (4), as evidenced by:
- (i) an uncontested citation;
  - (ii) a stipulated settlement; or
  - (iii) a finding of a violation in an adjudicative proceeding.
- (b) The division may, in addition to or in lieu of a fine under Subsection (5)(a), order the person to cease and desist from an activity that violates a provision listed in Subsection (4).
- (6) Except as provided in Subsection (8)(d), the division may not use a citation to effect a license:
- (a) denial;
  - (b) probation;
  - (c) suspension; or
  - (d) revocation.
- (7) (a) A citation issued by the division shall:
- (i) be in writing;
  - (ii) describe with particularity the nature of the violation, including a reference to the provision of the statute, rule, or order alleged to have been violated;
  - (iii) clearly state that the recipient must notify the division in writing within 20 calendar days after the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
  - (iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time period specified in the citation.
- (b) The division may issue a notice in lieu of a citation.
- (8) (a) A citation becomes final:
- (i) if within 20 calendar days after the day on which the citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation; or
  - (ii) if the director or the director's designee conducts a hearing pursuant to a timely

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request for a hearing and issues an order finding that a violation has occurred.

(b) The division may extend, for cause, the 20-day period to contest a citation.

(c) A citation that becomes the final order of the division due to a person's failure to timely request a hearing is not subject to further agency review.

(d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after the citation becomes final.

(ii) The failure of a license applicant to comply with a citation after the citation becomes final is a ground for denial of the license application.

(9) (a) The division may not issue a citation under this section after the expiration of one year after the day on which the violation occurs.

(b) The division may issue a notice to address a violation that is outside of the one-year citation period.

(10) The director or the director's designee shall assess a fine with a citation in an amount that is no more than:

(a) for a first offense, \$1,000;

(b) for a second offense, \$2,000; and

(c) for each offense subsequent to a second offense, \$2,000 for each day of continued offense.

(11) (a) An action for a first or second offense for which the division has not issued a final order does not preclude the division from initiating a subsequent action for a second or subsequent offense while the preceding action is pending.

(b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(12) (a) If a person does not pay a penalty, the director may collect the unpaid penalty by:

(i) referring the matter to a collection agency; or

(ii) bringing [~~an action in the district court of the county: (A) where the person resides; or (B) where the office of the director is located~~] an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

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(b) A county attorney or the attorney general of the state shall provide legal services to the director in an action to collect the penalty.

(c) A court may award reasonable attorney fees and costs to the division in an action the division brings to enforce the provisions of this section.

Section 93. Section **61-2c-403** is amended to read:

### **61-2c-403. Cease and desist orders.**

(1) (a) The director may issue and serve by certified mail, or by personal service, on a person an order to cease and desist from an act if:

(i) the director has reason to believe that the person has been engaged, is engaging in, or is about to engage in the act constituting a violation of this chapter; and

(ii) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after service of the order, the party named in the order may request a hearing to be held in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall remain in effect.

(2) (a) After the hearing described in Subsection (1), if the director finds that an act of the person violates this chapter, the director:

(i) shall issue an order making the cease and desist order permanent; and

(ii) may impose another disciplinary action under Section 61-2c-402.

(b) [(†)] The director may [~~file suit~~] bring an action [in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration](#), in the name of the division to enjoin and restrain a person on whom an order is served under this section from violating this chapter if:

[(A)] (i) [(†)] (A) the person does not request a hearing under Subsection (1); or

[(H)] (B) a permanent cease and desist order is issued against the person following a hearing or stipulation; and

[(B)] (ii) [(†)] (A) the person fails to cease the act; or

[(H)] (B) after discontinuing the act, the person again commences the act.

[(ii) ~~The suit described in Subsection (2)(b)(i) shall be filed in the district court in the county:~~]

[(A) ~~in which the act occurs;~~]

[(B) ~~where the individual resides; or~~]

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~~[(C) where the individual or entity carries on business.]~~

(3) The cease and desist order issued under this section may not interfere with or prevent the prosecution of a remedy or action enforcement under this chapter.

(4) An individual who violates a cease and desist order issued under this section is guilty of a class A misdemeanor.

Section 94. Section **61-2f-403** is amended to read:

### **61-2f-403. Mishandling of trust money.**

(1) The division may audit principal brokers' trust accounts or other accounts in which a licensee maintains trust money under this chapter. If the division's audit shows, in the opinion of the division, gross mismanagement, commingling, or misuse of money, the division, with the concurrence of the commission, may order at the division's expense a complete audit of the account by a certified public accountant, or take other action in accordance with Section 61-2f-404.

(2) If the commission finds under Subsection (1) that gross mismanagement, comingling, or misuse of money occurred, the commission, with concurrence of the division, may then order the licensee to reimburse the division for the cost of the audit described in Subsection (1).

(3) The licensee may obtain agency review by the executive director or judicial review of any division order.

(4) (a) If it appears that a person has grossly mismanaged, commingled, or otherwise misused trust money, the division, with or without prior administrative proceedings, may bring an action~~[(i) in the district court of the district where: (A) the person resides; (B) the person maintains a place of business; or (C) the act or practice occurred or is about to occur; and (ii)]~~ in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enjoin the act or practice and to enforce compliance with this chapter or any rule or order under this chapter.

(b) Upon a proper showing, a court shall grant injunctive relief or a temporary restraining order, and may appoint a receiver or conservator. The division is not required to post a bond in any court proceeding.

Section 95. Section **61-2f-407** is amended to read:

### **61-2f-407. Remedies and action for violations.**

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(1) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

(i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and

(ii) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after the day on which the order is served, the person upon whom the order is served may request a hearing.

(c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall remain in effect.

(d) If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(2) (a) After a hearing requested under Subsection (1), if the commission and the director agree that an act of the person violates this chapter, the director:

(i) shall issue an order making the order issued under Subsection (1) permanent; and

(ii) may impose another disciplinary action under Section 61-2f-404.

(b) The director shall ~~[file suit]~~ bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, in the name of the Department of Commerce and the Division of Real Estate ~~[, in the district court in the county in which an act described in Subsection (1) occurs or where the person resides or carries on business,]~~ to enjoin and restrain the person from violating this chapter if:

(i) (A) a hearing is not requested under Subsection (1); and

(B) the person fails to cease the act described in Subsection (1); or

(ii) after discontinuing the act described in Subsection (1), the person again commences the act.

~~[(c) A district court of this state has jurisdiction of an action brought under this section.]~~

~~[(d)]~~ (c) Upon a proper showing in an action brought under this section or upon a conviction under Section 76-6-1203, the court may:

(i) issue a permanent or temporary, prohibitory or mandatory injunction;

(ii) issue a restraining order or writ of mandamus;

(iii) enter a declaratory judgment;

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- (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
- (v) order disgorgement;
- (vi) order rescission;
- (vii) impose a civil penalty not to exceed the greater of:
  - (A) \$5,000 for each violation; or
  - (B) the amount of any gain or economic benefit derived from a violation; and
- (viii) enter any other relief the court considers just.

~~[(e)]~~ (d) The court may not require the division to post a bond in an action brought under this Subsection (2).

(3) A license, certificate, or registration issued by the division to any person convicted of a violation of Section 76-6-1203 is automatically revoked.

(4) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

Section 96. Section **61-2g-501** is amended to read:

### **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

(1) (a) The division may conduct a public or private investigation of the actions of:

- (i) a person registered, licensed, or certified under this chapter;
- (ii) an applicant for registration, licensure, or certification;
- (iii) an applicant for renewal of registration, licensure, or certification; or
- (iv) a person required to be registered, licensed, or certified under this chapter.

(b) The division may initiate an agency action against a person described in Subsection (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

- (i) impose disciplinary action;
- (ii) deny issuance to an applicant of:
  - (A) an original registration, license, or certification; or
  - (B) a renewal of a registration, license, or certification; or
- (iii) issue a cease and desist order as provided in Subsection (3).

(2) (a) The division may:

- (i) administer an oath or affirmation;
- (ii) issue a subpoena that requires:
  - (A) the attendance and testimony of a witness; or

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(B) the production of evidence;

(iii) take evidence; and

(iv) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).

(b) The division may serve a subpoena by certified mail.

(c) A failure to respond to a request by the division in an investigation authorized under this chapter within 10 days after the day on which the request is served is considered to be a separate violation of this chapter, including:

(i) failing to respond to a subpoena as a witness;

(ii) withholding evidence; or

(iii) failing to produce a book, paper, contract, document, information, or record.

(d) (i) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.

(ii) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.

(e) (i) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.

(ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the person's license, certification, or registration is automatically suspended:

(A) beginning the day on which the payment of costs is due; and

(B) ending the day on which the costs are paid.

(3) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

(i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and

(ii) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after the day on which the order is served, the person upon whom the order is served may request a hearing.

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(c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) After a hearing requested under Subsection (3), if the board and division concur that an act of the person violates this chapter, the board, with the concurrence of the division:

(i) shall issue an order making the cease and desist order permanent; and

(ii) may impose another disciplinary action under Section 61-2g-502.

(b) The director shall [~~commence an action~~] bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, in the name of the Department of Commerce and Division of Real Estate[~~; in the district court in the county in which an act described in Subsection (3) occurs or where the individual resides or carries on business;~~] to enjoin and restrain the individual from violating this chapter if:

(i) (A) a hearing is not requested under Subsection (3); and

(B) the individual fails to cease the act described in Subsection (3); or

(ii) after discontinuing the act described in Subsection (3), the individual again commences the act.

(5) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

(6) (a) Except as provided in Subsection (6)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:

(i) four years after the day on which the violation is reported to the division; or

(ii) 10 years after the day on which the violation occurred.

(b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:

(i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and

(B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or

(ii) the division and the individual subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).



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Section 97. Section **70-3a-309** is amended to read:

### **70-3a-309. Cybersquatting.**

(1) (a) A person is liable in a civil action by the owner of a mark, including a personal name, which is a mark for purposes of this section, if, without regard to the goods or services of the person or the mark's owner, the person:

(i) has a bad faith intent to profit from the mark, including a personal name; and

(ii) for any length of time registers, acquires, traffics in, or uses a domain name in, or belonging to any person in, this state that:

(A) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to the mark;

(B) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of the mark; or

(C) is a trademark, word, or name protected by reason of 18 U.S.C. Sec. 706 or 36 U.S.C. Sec. 220506.

(b) (i) In determining whether a person has a bad faith intent described in Subsection (1)(a), a court may consider all relevant factors, including:

(A) the trademark or other intellectual property rights of the person, if any, in the domain name;

(B) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

(C) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(D) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

(E) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

(F) the person's offer to transfer, sell, or otherwise assign, or solicitation of the purchase, transfer, or assignment of the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona

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fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

(G) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

(H) the person's registration or acquisition of multiple domain names that the person knows are identical or confusingly similar to another's mark that is distinctive at the time of registration of the domain names, or is dilutive of another's famous mark that is famous at the time of registration of the domain names, without regard to the goods or services of the person or the mark owner; and

(I) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous.

(ii) Bad faith intent described in Subsection (1)(a) may not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

(c) In a civil action involving the registration, trafficking, or use of a domain name under this section, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(d) (i) A person is liable for using a domain name under Subsection (1)(a) only if that person is the domain name registrant or that registrant's authorized licensee, affiliate, domain name registrar, domain name registry, or other domain name registration authority that knowingly assists a violation of this chapter by the registrant.

(ii) A person may not be held liable under this section absent a showing of bad faith intent to profit from the registration or maintenance of the domain name.

(iii) For purposes of this section, a "showing of bad faith intent to profit" shall be interpreted in the same manner as under 15 U.S.C. Sec. 1114(2)(D)(iii).

(e) As used in this section, the term "traffics in" refers to transactions that include sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

(2) (a) The owner of a mark registered with the U.S. Patent and Trademark Office or under this chapter may ~~file an in rem civil action~~ bring an in rem civil action in a court with

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jurisdiction under Title 78A, Judiciary and Judicial Administration, against a domain name [~~in~~  
~~the district court~~] if the owner is located in the state and if:

(i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office or registered under this chapter; and

(ii) the court finds that the owner:

(A) is not able to obtain personal jurisdiction over a person who would be a defendant in a civil action under Subsection (1); or

(B) through due diligence was not able to find a person who would be a defendant in a civil action under Subsection (1) by:

(I) sending a notice of the alleged violation and intent to proceed under this Subsection (2)(a) to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and

(II) publishing notice of the action as the court may direct promptly after filing the action.

(b) Completion of the actions required by Subsection (2)(a)(ii) constitutes service of process.

(c) In an in rem action under this Subsection (2), a domain name is considered to be located in the judicial district in which:

(i) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located; or

(ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

(d) (i) The remedies in an in rem action under this Subsection (2) are limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(ii) Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in the [~~district~~] court under this Subsection (2), the domain name registrar, domain name registry, or other domain name authority shall:

(A) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and

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(B) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.

(iii) The domain name registrar or registry or other domain name authority is not liable for injunctive or monetary relief under this section, except in the case of bad faith or reckless disregard, which includes a willful failure to comply with a court order.

(3) The civil actions and remedies established by Subsection (1) and the in rem action established in Subsection (2) do not preclude any other applicable civil action or remedy.

(4) The in rem jurisdiction established under Subsection (2) does not preclude any other jurisdiction, whether in rem or personal.

Section 98. Section **70-3a-402** is amended to read:

### **70-3a-402. Infringement.**

(1) Subject to Section 70-3a-104 and Subsection (2), any person is liable in a civil action brought by the registrant for any and all of the remedies provided in Section 70-3a-404, if that person:

(a) uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter:

(i) without the consent of the registrant; and

(ii) in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which that use is likely to cause confusion, mistake, or to deceive as to the source of origin, nature, or quality of those goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of goods or services.

(2) Under Subsection (1)(b), the registrant is not entitled to recover profits or damages unless the act described in Subsection (1)(b) has been committed with the intent:

(a) to cause confusion or mistake; or

(b) to deceive.

(3) In a civil action for a violation of Section 70-3a-309:

(a) the plaintiff may recover court costs and reasonable attorney fees; and

(b) the plaintiff may elect, at any time before final judgment is entered by the [district]

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court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court considers just.

(4) Statutory damages awarded under Subsection (3)(b) are presumed to be \$100,000 per domain name if there is a pattern and practice of infringements committed willfully for commercial gain.

Section 99. Section **70-3a-405** is amended to read:

**70-3a-405. Forum for actions regarding registration -- Service on out-of-state registrants.**

~~{(1)}~~(1) (a) ~~[An action to require the cancellation of a mark registered under this chapter shall be brought in a district court of this state.]~~

~~—~~~~{(b)}~~ ~~{(1)}~~ (a) A person may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to require the cancellation of a mark registered under this chapter.

~~{(b)}~~(b) The division may not be made a party to an action filed under Subsection (1)(a), except that the division may intervene in an action filed under Subsection (1)(a).

(2) In any action brought against a nonresident registrant, service may be effected upon the nonresident registrant in accordance with the procedures established for service upon nonresident corporations and business entities under Section 16-10a-1511.

Section 100. Section **70A-8-409.1** is amended to read:

**70A-8-409.1. Replacement of lost, destroyed, or wrongfully taken share certificate of a land company or a water company.**

(1) ~~[For purposes of]~~ As used in this section:

(a) "Affected share" means the share represented by a share certificate that is lost, destroyed, or wrongfully taken.

(b) "Company" means a land company or a water company.

(c) "Distribution area" means:

(i) for a water company, the geographic area where the water company distributes water; or

(ii) for a land company, the geographic area owned by the land company.

(d) "Original share certificate" means a share certificate that is alleged to be lost,

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destroyed, or wrongfully taken.

(e) "Person" means:

(i) an individual;

(ii) a corporation;

(iii) a business entity;

(iv) a political subdivision of the state, including a municipality;

(v) an agency of the state; or

(vi) an agency of the federal government.

(f) "Replacement share certificate" means a share certificate issued to replace a share certificate that is lost, destroyed, or wrongfully taken.

(g) "Share certificate" means a certificated share of stock in a company.

(2) (a) This section applies to the replacement of a lost, destroyed, or wrongfully taken share certificate.

(b) Unless the articles of incorporation or bylaws of a company address the replacement of a lost, destroyed, or wrongfully taken share certificate, this section governs the replacement of a lost, destroyed, or wrongfully taken share certificate.

(3) A company shall issue a replacement share certificate to a person claiming to be the owner of a share certificate that is lost, destroyed, or wrongfully taken, and cancel the original share certificate on the records of the company, if:

(a) the person represents to the company that the original share certificate is lost, destroyed, or wrongfully taken;

(b) (i) (A) the person is the registered owner of the affected share; and

(B) before the company receives notice that the share certificate has been acquired by a protected purchaser, the person requests that a replacement share certificate be issued; or

(ii) (A) the person is not the registered owner of the affected share; and

(B) the person establishes ownership of the affected share, including by presenting to the company written documentation that demonstrates to the reasonable satisfaction of the company that the person is the rightful owner of the affected share through purchase, gift, inheritance, foreclosure, bankruptcy, or reorganization;

(c) the assessments to which the affected share is subject are paid current;

(d) except as provided in Subsection (5), the person files with the company a sufficient

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indemnity bond or other security acceptable to the company; and

(e) the person satisfies any other reasonable requirement imposed by the company, including the payment of a reasonable transfer fee.

(4) (a) If after a replacement share certificate is issued a protected purchaser of the original share certificate presents the original share certificate for registration of transfer, the company shall register the transfer unless an overissue would result.

(b) If an overissue would result when there is a registration of transfer of an original share certificate, a company may recover the replacement share certificate from the person to whom it is issued, or any person taking under that person, except a protected purchaser.

(c) If a company elects to follow the procedures of Subsection (5), to assert an ownership interest in the affected share, a protected purchaser shall file a written notice of objection within the 60-day period described in Subsection (5)(d). A protected purchaser's failure to file a written notice of objection within the 60-day period eliminates any claim of the protected purchaser.

(5) As an alternative to requiring an indemnity bond or other acceptable security under Subsection (3)(d), a company is considered to have followed a fair and reasonable procedure without the necessity of a written policy or bylaw otherwise required by Section 16-6a-609, if the company follows the following procedure:

(a) The company shall publish written notice at least once a week for three consecutive weeks:

(i) (A) in a newspaper of general circulation in the area that reasonably includes the distribution area of the company; and

(B) as required in Section 45-1-101;

(ii) with at least seven days between each publication date under Subsection (5)(a)(i)(A); and

(iii) beginning no later than 20 days after submission of the request to issue the replacement share certificate.

(b) The company shall post written notice in at least three conspicuous places within the distribution area of the company.

(c) No later than 20 days after the day on which the company receives a request to issue a replacement share certificate, the company shall mail written notice:

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(i) to the last known address of the owner of the affected share shown on the records of the company;

(ii) if a company maintains a record of who pays annual assessments, to any person who, within the five-year period immediately preceding the day the written notice is mailed, pays an assessment levied against the affected share; and

(iii) to any person that has notified the company in writing of an interest in the affected share, including a financial institution.

(d) A notice required under Subsections (5)(a) through (c) shall:

(i) identify the person who is requesting that a replacement share certificate be issued;

(ii) state that an interested person may file a written notice of objection with the company; and

(iii) state that unless a written notice of objection to the issuance of a replacement share certificate is filed within 60 days after the last day of publication under Subsection (5)(a)(i)(A), including a written notice of objection from a protected purchaser:

(A) a replacement share certificate will be issued to the person requesting that the replacement share certificate be issued; and

(B) the original share certificate will be permanently canceled on the records of the company.

(e) A notice of objection under Subsection (5)(d) shall:

(i) state the basis for objecting to the claim of ownership of the affected share;

(ii) identify a person that the objecting person believes has a stronger claim of ownership to the affected share; and

(iii) be accompanied by written evidence that reasonably documents the basis of the objection to the claim of ownership.

(f) If the company receives a notice of objection within the 60-day period described in Subsection (5)(d), the company may review the disputed claim and:

(i) deny in writing the objection to the claim of ownership and issue a replacement share certificate to the person requesting the replacement share certificate;

(ii) accept in writing a claim of ownership asserted by a notice of objection and issue a replacement share certificate to the person the objecting person asserts owns the affected share;

(iii) file an interpleader action in accordance with Utah Rules of Civil Procedure, Rule



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22, joining the persons claiming an interest in the affected share and depositing a replacement share certificate with the court; or

(iv) require the persons claiming an interest in the affected share to resolve the ownership dispute.

(g) Upon receipt, the company shall act in accordance with:

(i) a written agreement acceptable to the company among the persons who claim interest in the affected share; or

(ii) a court order declaring ownership in the affected share.

(h) The following are entitled to receive from a nonprevailing person the costs for resolution of a dispute under this Subsection (5), including reasonable attorney fees when attorney fees are necessary:

(i) a prevailing person; and

(ii) the company, if the company acts in good faith.

(i) The person requesting that a replacement share certificate be issued shall reimburse the company for the costs reasonably incurred by the company under this Subsection (5) that are not paid under this Subsection (5)(i) including:

(i) legal and other professional fees; and

(ii) costs incurred by the company in response to a notice of objection.

(j) A company shall comply with this Subsection (5) before issuance of a replacement share certificate:

(i) upon request from the person requesting a replacement share certificate be issued; and

(ii) if the person requesting the replacement share certificate provides indemnification satisfactory to the company against liability and costs of proceeding under this Subsection (5).

(k) A determination made under this Subsection (5) is considered to be a final and conclusive determination of ownership of a disputed replacement share certificate.

(6) (a) A company shall:

(i) make a decision to approve or deny the issuance of a replacement share certificate in writing; and

(ii) deliver the written decision to:

(A) the person requesting a replacement share certificate be issued;

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(B) a person who files a notice of objection under Subsection (5); and

(C) any other person the company determines is involved in the request for a replacement share certificate.

(b) A person may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, against a company for judicial review of a decision by the company under Subsection (6)(a).

~~[(b) A decision of a company described in Subsection (6)(a) is subject to de novo judicial review in the district court in which the company has its principal place of business.]~~

(c) (i) A person may not seek judicial review under Subsection (6)(b) more than 30 days after the day on which the written decision is delivered under Subsection (6)(a).

(ii) If no action for judicial review is filed within the 30-day period, absent fraud, the issuance of a replacement share certificate or the decision to not issue a replacement share certificate is final and conclusive evidence of ownership of the affected share.

(d) (i) In a judicial action brought under this Subsection (6), the prevailing person as determined by court order, is entitled to payment by a nonprevailing person of:

(A) the costs of successfully defending its ownership claim; and

(B) reasonable attorney fees.

(ii) Notwithstanding Subsection (6)(d)(i), an award of costs or attorney fees may not be granted against a company if the company acts in good faith.

Section 101. Section **70A-9a-513.5** is amended to read:

**70A-9a-513.5. Termination of wrongfully filed financing statement --**

### **Reinstatement.**

(1) As used in this section:

(a) "Established filer" means a person that:

(i) regularly causes records to be communicated to the filing office for filing and has provided the filing office with current contact information and information sufficient to establish its identity; or

(ii) satisfies either of the following conditions:

(A) the filing office has issued the person credentials for access to online filing services; or

(B) the person has established an account for payment of filing fees, regardless of

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whether the account is used in a particular transaction.

(b) "Filing office" means the same as that term is defined in Section 70A-9a-102, except that it does not include a county recorder office.

(2) A person identified as debtor in a filed financing statement may deliver to the filing office the debtor's notarized affidavit, signed under penalty of perjury, that identifies the financing statement by file number, indicates the affiant's mailing address, and states that the affiant believes that the filed record identifying the affiant as debtor was not authorized and was caused to be communicated to the filing office with the intent to harass or defraud the affiant. The filing office shall adopt a form of affidavit for use under this section. The filing office may reject an affidavit described in this Subsection (2) if:

(a) the affidavit is incomplete; or

(b) the filing office reasonably believes that the affidavit was communicated to the filing office with the intent to harass or defraud, or for any other unlawful purpose.

(3) Subject to Subsection (10), if an affidavit is delivered to the filing office under Subsection (2), the filing office shall promptly file a termination statement with respect to the financing statement identified in the affidavit. The termination statement must identify by its file number the initial financing statement to which it relates and must indicate that it was filed pursuant to this section. A termination statement filed under this Subsection (3) is not effective until 14 days after it is filed.

(4) The filing office may not charge a fee for the filing of an affidavit under Subsection (2) or a termination statement under Subsection (3). The filing office may not return any fee paid for filing the financing statement identified in the affidavit, whether or not the financing statement is reinstated under Subsection (7).

(5) On the same day that a filing office files a termination statement under Subsection (3), it shall send to the secured party of record for the financing statement to which the termination statement relates a notice stating that the termination statement has been filed and will become effective 14 days after filing. The notice shall be sent by mail to the address provided for the secured party of record in the financing statement or by electronic mail to the electronic mail address provided by the secured party of record, if any.

(6) (a) A secured party that believes in good faith that the filed record identified in an affidavit delivered to the filing office under Subsection (2) was authorized and was not caused

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to be communicated to the filing office with the intent to harass or defraud the affiant may:

(i) before the termination statement takes effect under Subsection (3), request the filing office to review the filed record concerning whether the filed record was filed with the intent to harass or defraud; or

(ii) regardless of whether the affiant seeks a review under Subsection (6)(a)(i), file an action against the filing office seeking reinstatement of the financing statement to which the filed record relates.

(b) Within 10 days after being served with process in an action under this Subsection (6), the filing office shall file a notice indicating that the action has been commenced. The notice shall indicate the file number of the initial financing statement to which it relates.

(c) If the affiant is not named as a defendant in the action described in Subsection (6)(a)(ii), the secured party shall send a copy of the complaint to the affiant at the address indicated in the affidavit. [~~The exclusive venue for the action shall be in the Third District Court.~~] A party may petition the court to consider the matter on an expedited basis.

(d) An action under this Subsection (6) must be filed before the expiration of six months after the date on which the termination statement filed under Subsection (3) becomes effective.

(7) If, in an action under Subsection (6), the court determines that the financing statement should be reinstated, the filing office shall promptly file a record that identifies by its file number the initial financing statement to which the record relates and indicates that the financing statement has been reinstated.

(8) Upon the filing of a record reinstating a financing statement under Subsection (7), the effectiveness of the financing statement is reinstated and the financing statement shall be considered never to have been terminated under this section. A continuation statement filed as provided in Subsection 70A-9a-515(4) after the effective date of a termination statement filed under Subsection (3) or (10) becomes effective if the financing statement is reinstated.

(9) If, in an action under Subsection (6), the court determines that the filed record identified in an affidavit delivered to the filing office under Subsection (2) was unauthorized and was caused to be communicated to the filing office with the intent to harass or defraud the affiant, the filing office and the affiant may recover from the secured party that filed the action the costs and expenses, including reasonable attorney fees, that the filing office and the affiant

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incurred in the action. This recovery is in addition to any recovery to which the affiant is entitled under Section 70A-9a-625.

(10) If an affidavit delivered to a filing office under Subsection (2) relates to a filed record communicated to the filing office by an established filer, the filing office shall promptly send to the secured party of record a notice stating that the affidavit has been delivered to the filing office and that the filing office is conducting an administrative review to determine whether the record was unauthorized and was caused to be communicated with the intent to harass or defraud the affiant. The notice shall be sent by mail to the address provided for the secured party in the financing statement or sent by electronic mail to the electronic mail address provided by the secured party of record, if any, and a copy shall be sent in the same manner to the affiant. The administrative review shall be conducted on an expedited basis and the filing office may require the affiant and the secured party of record to provide any additional information that the filing office considers appropriate. If the filing office concludes that the record was not authorized and was caused to be communicated with the intent to harass or defraud the affiant, the filing office shall promptly file a termination statement under Subsection (3) that will be effective immediately and send to the secured party of record the notice required by Subsection (5). The secured party may thereafter file an action for reinstatement under Subsection (6), and Subsections (7) through (9) are applicable.

Section 102. Section **78A-6-350** is amended to read:

### **78A-6-350. Venue -- Dismissal without adjudication on merits.**

(1) Notwithstanding [~~Title 78B, Chapter 3, Part 3, Place of Trial -- Venue~~] Title 78B, Chapter 3a, Venue for Civil Actions, a proceeding for a minor's case in the juvenile court shall be commenced in the court of the district in which:

(a) for a proceeding under Title 80, Chapter 6, Juvenile Justice:

- (i) the minor is living or found; or
- (ii) the alleged offense occurred; or

(b) for all other proceedings, the minor is living or found.

(2) If a party seeks to transfer a case to another district after a petition has been filed in the juvenile court, the juvenile court may transfer the case in accordance with the Utah Rules of Juvenile Procedure.

(3) The dismissal of a petition in one district where the dismissal is without prejudice

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and where there has been no adjudication upon the merits may not preclude refiling within the same district or another district where there is venue for the case.

Section 103. Section **78B-1-132** is amended to read:

**78B-1-132. Employer not to discharge or threaten employee for responding to subpoena -- Criminal penalty -- Civil action by employee.**

(1) An employer may not deprive an employee of employment or threaten or otherwise coerce the employee regarding employment because the employee attends a deposition or hearing in response to a subpoena.

(2) Any employer who violates this section is guilty of criminal contempt and upon conviction may be fined not more than \$500 or imprisoned not more than six months or both.

(3) (a) If an employer violates this section, in addition to any other remedy, the employee may bring [~~a civil action in district court~~] an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee.

(b) Damages recoverable may not exceed lost wages for six weeks.

(c) If the employee prevails, the employee shall be allowed reasonable attorney fees.

Section 104. Section **78B-3a-101** is enacted to read:

### CHAPTER 3a. VENUE FOR CIVIL ACTIONS

#### Part 1. General Provisions

**78B-3a-101. Definitions.**

As used in this chapter:

(1) (a) "Action" means ~~any action that is not~~ a lawsuit or case that is commenced in a court.

(b) "Action" does not include a criminal action as defined in Section 77-1-3.

(2) "Business organization" means:

(a) an association;

(b) a corporation;

(c) an institution, as that term is defined in Section 7-1-103;

(d) a joint stock company;

(e) a joint venture;

(f) a limited liability company;

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(g) a mutual fund trust;

(h) a partnership; or

(i) any other similar form of organization described in Subsections (2)(a) through (g).

(3) "Cause of action" means the act or omission giving rise to the action.

(~~3~~4) "Principal place of business" means the place where the business organization's officers direct, control, and coordinate the business organization's activities regardless of whether the place is located in this state.

(~~4~~5) "Registered office" means the place within this state that the business organization designated as the business organization's registered office in the most recent document on file with the Division of Corporations and Commercial Code.

Section 105. Section **78B-3a-102** is enacted to read:

**78B-3a-102. Applicability of this chapter -- Venue for the Business and Chancery Court.**

(1) Except as otherwise provided by another provision of the Utah Code, a plaintiff shall bring an action in accordance with the requirements of this chapter.

(2) The requirements of this chapter do not apply to an action brought in the Business and Chancery Court.

Section 106. Section **78B-3a-103** is enacted to read:

**78B-3a-103. Transfer of venue.**

(1) A court may transfer venue in accordance with Rule 42 of the Utah Rules of Civil Procedure.

(2) A court to which an action is transferred has the same jurisdiction as if the action had been originally brought in that court.

Section 107. Section **78B-3a-104** is enacted to read:

**78B-3a-104. Residence of a business organization.**

For purposes of this chapter, the residence of a business organization is:

(1) the county where the business organization's principal place of business is located;

(2) the county where the business organization's registered office is located if the business organization does not have a principal place of business in the state; or

(3) Salt Lake County if the business organization does not have a principal place of business or a registered office in the state.

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Section 108. Section **78B-3a-201**, which is renumbered from Section 78B-3-307 is renumbered and amended to read:

### Part 2. Venue Requirements

~~[78B-3-307].~~      **78B-3a-201. All actions -- Exceptions.**

(1) ~~[In all other cases an action shall be tried]~~ Except as otherwise provided by this chapter or another provision of the Utah Code, a plaintiff shall bring an action in the county in which:

- (a) the ~~for~~ cause of ~~for~~ action arises; or
- (b) any defendant resides at the commencement of the action.

~~[(2) If the defendant is a corporation, any county in which the corporation has its principal office or a place of business shall be considered the county in which the corporation resides.]~~

~~[(3)]~~ (2) If none of the defendants ~~[resides]~~ reside in this state, ~~[the action may be commenced and tried]~~ the plaintiff may bring the action in any county designated by the plaintiff in the complaint.

~~[(4)]~~ (3) If the defendant is about to depart from the state, ~~[the action may be tried]~~ the plaintiff may bring the action in any county where any of the parties resides or service is had.

Section 109. Section **78B-3a-202**, which is renumbered from Section 78B-3-301 is renumbered and amended to read:

~~[78B-3-301].~~      **78B-3a-202. Actions involving real property.**

(1) ~~[Actions for the following causes involving real property shall be tried in the county in which the subject of the action, or some part,]~~ A plaintiff shall bring the following actions involving real property in the county in which the real property, or some part of the real property, is situated:

- (a) for the recovery of real property~~;~~ or of an estate or interest in the property;
- (b) for the determination, in any form, of the right or interest in the real property;
- (c) for injuries to real property;
- (d) for the partition of real property; and
- (e) for the foreclosure of all liens and mortgages on real property.

(2) If the real property is situated ~~[partly in one county and partly in another, the plaintiff may select either of the counties, and the county selected is the proper county for the~~



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~~trial of the action]~~ in more than one county, the plaintiff may bring the action in any county in which the real property is situated.

Section 110. Section **78B-3a-203**, which is renumbered from Section 78B-3-302 is renumbered and amended to read:

~~[78B-3-302].~~        **78B-3a-203. Actions to recover fines or penalties -- Actions against public officers.**

(1) ~~[Actions to recover fines or penalties shall be tried]~~ A plaintiff shall bring an action to recover a fine or penalty in the county where ~~[the cause of action],~~ or some part of the ~~cause of action],~~ arose.:

(a) the cause of action arises; or

(b) some part of the cause of action arises.

(2) If a fine, penalty, or forfeiture imposed by statute is imposed for an offense committed on a lake, river, or other stream of water situated in two or more counties, ~~[the action may be brought]~~ the plaintiff may bring the action in any county bordering on the lake, river, or stream opposite to the place where the offense was committed.

(3) Except as otherwise provided by law, a plaintiff shall bring an action against a public officer, or the public officer's designee, ~~[shall be tried] in~~ in the county where the ~~cause arose]~~ cause of action arises.

Section 111. Section **78B-3a-204**, which is renumbered from Section 78B-3-303 is renumbered and amended to read:

~~[78B-3-303].~~        **78B-3a-204. Actions against a county.**

(1) ~~[An action against a county may be commenced and tried]~~ Except as otherwise provided in Subsection (2), a plaintiff shall bring an action against a county in the county.

(2) If the action is brought by another county, ~~[the action may be commenced and tried in]~~ the county may bring the action in any county not a party to the action.

Section 112. Section **78B-3a-205**, which is renumbered from Section 78B-3-304 is renumbered and amended to read:

~~[78B-3-304].~~        **78B-3a-205. Actions on written contracts.**

~~[An action]~~ A plaintiff shall bring an action on a contract signed in this state to perform an obligation ~~[may be commenced and tried in the following venues]~~ in:

(1) ~~[If]~~ if the action is to enforce an interest in real property securing a consumer's

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obligation, [~~the action may be brought only in~~] the county where the real property is located or where the defendant resides[~~;~~]; or

(2) [~~An action~~] if the action is to enforce an interest other than under Subsection (1) [~~may be brought in~~], the county where the obligation is to be performed, the contract was signed, or in which the defendant resides.

Section 113. Section **78B-3a-206** is enacted to read:

### **78B-3a-206. Transitory actions.**

(1) Except for a transitory action under Subsection (2), a plaintiff shall bring a transitory action arising outside the state in the county where the defendant resides if the action is brought in this state.

(2) A plaintiff shall bring a transitory action arising outside the state in favor of residents of this state in the county where:

(a) the plaintiff resides; or

(b) the principal defendant resides.

Section 114. Section **78B-5-201** is amended to read:

### **78B-5-201. Definitions -- Judgment recorded in Registry of Judgments.**

(1) [~~For purposes of this part~~] As used in this part, "Registry of Judgments" means the index where a judgment is filed and searchable by the name of the judgment debtor through electronic means or by tangible document.

(2) On or after July 1, 1997, a judgment entered [~~in a district court~~] by a court of this state does not create a lien upon or affect the title to real property unless the judgment is filed in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment entered [~~in a district court~~] by a court of this state does not create a lien upon or affect the title to real property unless the judgment or an abstract of judgment is recorded in the office of the county recorder in which the real property of the judgment debtor is located.

(b) State agencies are exempt from the recording requirement of Subsection (3)(a).

(4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include:

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(a) the information identifying the judgment debtor as required under Subsection (4)(b) on the judgment or abstract of judgment; or

(b) a copy of the separate information statement of the judgment creditor that contains:

(i) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;

(ii) the name and address of the judgment creditor;

(iii) the amount of the judgment as filed in the Registry of Judgments;

(iv) if known, the judgment debtor's Social Security number, date of birth, and driver's license number if a natural person; and

(v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

(5) For the information required in Subsection (4), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in which the judgment was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

(6) (a) Any judgment that requires payment of money and is entered [~~in a district court~~] by a court of this state on or after September 1, 1998, or any judgment or abstract of judgment recorded in the office of a county recorder after July 1, 2002, that does not include the debtor identifying information as required in Subsection (4) is not a lien until a separate information statement of the judgment creditor is recorded in the office of a county recorder in compliance with Subsections (4) and (5).

(b) The separate information statement of the judgment creditor referred to in Subsection (6)(a) shall include:

(i) the name of any judgment creditor, debtor, assignor, or assignee;

(ii) the date on which the judgment was recorded in the office of the county recorder as described in Subsection (4); and

(iii) the county recorder's entry number and book and page of the recorded judgment.

(7) A judgment that requires payment of money recorded on or after September 1, 1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with

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actual or constructive knowledge of the judgment.

(8) A judgment or notice of judgment wrongfully filed against real property is subject to Title 38, Chapter 9, Wrongful Lien Act.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Section 115. Section **78B-5-202** is amended to read:

**78B-5-202. Duration of judgment -- Judgment as a lien upon real property -- Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child support orders.**

(1) Judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) An abstract of judgment issued by the court in which the judgment is entered may be filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in [~~the small claims division of any court~~] a small claims action may not qualify as a lien upon real property

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unless abstracted to [~~the civil division of~~] the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit with the court where the notice of appeal is filed of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney fees and costs on appeal, the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) (a) A child support order or a sum certain judgment for past due support may be enforced:

- (i) within four years after the date the youngest child reaches majority; or
- (ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

(b) The longer period of duration shall apply in every order.

(c) A sum certain judgment may be renewed to extend the duration.

(7) (a) After July 1, 2002, a judgment entered by [~~a district court or a justice court in the state~~] a district court, a justice court, or the Business and Chancery Court, becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78B-5-201(4)(b) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78B-5-201(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the [~~district court or justice~~] court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

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(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

(8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the judgment debtor in the judgment index in the office of the county recorder as required in Section 17-21-6.

(b) A judgment containing a legal description shall also be abstracted in the appropriate tract index in the office of the county recorder.

(9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the office of a county recorder, a person shall, in the office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing, assigning, renewing, or extending the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release, assignment, renewal, or extension;

(ii) the name of any judgment creditor, debtor, assignor, or assignee; and

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien.

Section 116. Section **78B-5-206** is amended to read:

**78B-5-206. Mileage allowance for judgment debtor required to appear.**

(1) A judgment debtor legally required to appear before ~~{} a district court [or a master]~~ or the Business and Chancery Court to answer concerning ~~{ a court or a master regarding }~~ the debtor's property is entitled, on a sufficient showing of need, to mileage of 15 cents per mile for each mile actually and necessarily traveled in going only, to be paid by the judgment creditor at whose instance the judgment debtor was required to appear.

(2) The judgment creditor is not required to make any payment for such mileage until the judgment debtor has actually appeared before the court ~~[or master]~~.

Section 117. Section **78B-6-110** is amended to read:

**78B-6-110. Notice of adoption proceedings.**

(1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a

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sexual relationship with a woman:

(i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and

(ii) has a duty to protect his own rights and interests.

(b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.

(2) Notice of an adoption proceeding shall be served on each of the following persons:

(a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121, unless that right has been terminated by:

(i) waiver;

(ii) relinquishment;

(iii) actual or implied consent; or

(iv) judicial action;

(b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health and Human Services, in accordance with Subsection (3);

(c) any legally appointed custodian or guardian of the adoptee;

(d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;

(e) the adoptee's spouse, if any;

(f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) a person who is:

(i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and

(ii) holding himself out to be the child's father; and

(h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption, unless the court finds that the mother's spouse is not the child's father under Section 78B-15-607.

(3) (a) In order to preserve any right to notice, an unmarried biological father shall,

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consistent with Subsection (3)(d):

(i) initiate proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and

(ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i) with the office of vital statistics within the Department of Health and Human Services.

(b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section [~~78B-3-307~~] 78B-3a-201.

(c) The Department of Health and Human Services shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.

(d) When the state registrar of vital statistics receives a completed form, the registrar shall:

(i) record the date and time the form was received; and

(ii) immediately enter the information provided by the unmarried biological father in the confidential registry established by Subsection 78B-6-121(3)(c).

(e) The action and notice described in Subsection (3)(a):

(i) may be filed before or after the child's birth; and

(ii) shall be filed prior to the mother's:

(A) execution of consent to adoption of the child; or

(B) relinquishment of the child for adoption.

(4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section:

(a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the petition for adoption;

(b) shall be served at least 30 days prior to the final dispositional hearing;

(c) shall specifically state that the person served shall fulfill the requirements of Subsection (6)(a) within 30 days after the day on which the person receives service if the person intends to intervene in or contest the adoption;



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(d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;

(e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption;

(f) shall state where the person may obtain a copy of the petition for adoption; and

(g) shall indicate the right to the appointment of counsel for a party whom the court determines is indigent and at risk of losing the party's parental rights.

(6) (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

(i) within 30 days after the day on which the person was served with notice of the adoption proceeding;

(ii) setting forth specific relief sought; and

(iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:

(i) waives any right to further notice in connection with the adoption;

(ii) forfeits all rights in relation to the adoptee; and

(iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(7) Service of notice under this section shall be made as follows:

(a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.

(ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.

(iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.

(b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice

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is required under this section, service by certified mail, return receipt requested, is sufficient.

(ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health and Human Services in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.

(8) The notice required by this section may be waived in writing by the person entitled to receive notice.

(9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:

- (a) intervene in the adoption; and
- (b) present evidence to the court relevant to the best interest of the child.

Section 118. Section **78B-6-313** is amended to read:

### **78B-6-313. Contempt of process of nonjudicial officer -- Procedure.**

(1) If a person, officer, referee, arbitrator, board, or committee with the authority to compel the attendance of witnesses or the production of documents issues a subpoena and the person to whom the subpoena is issued refuses to appear or produce the documents ordered, the person shall be considered in contempt.

(2) (a) The person, officer, referee, arbitrator, board, or committee may report the person to whom the subpoena is issued to the ~~[judge of the district]~~ court.

(b) The court may then issue a warrant of attachment or order to show cause to compel the person's appearance.

(3) When a person charged has been brought up or has appeared, the person's contempt

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may be purged in the same manner as other contempts mentioned in this part.

Section 119. Section **78B-6-1303** is amended to read:

### **78B-6-1303. Lis pendens -- Notice.**

(1) (a) Any party to an action filed in the United States District Court for the District of Utah, the United States Bankruptcy Court for the District of Utah, ~~[or a {} Utah district court]~~ [trial] a district court of this state, or the Business and Chancery Court of this state, that affects the title to, or the right of possession of, real property may file a notice of pendency of action.

(b) A party that chooses to file a notice of pendency of action shall:

(i) first, file the notice with the court that has jurisdiction of the action; and

(ii) second, record a copy of the notice filed with the court with the county recorder in the county where the property or any portion of the property is located.

(c) A person may not file a notice of pendency of action unless a case has been filed and is pending in ~~[a United States or Utah district court]~~ the United States District Court for the District of Utah, the United States Bankruptcy Court for the District of Utah, a district court of this state, or [a trial court] the Business and Chancery Court of this state.

(2) The notice shall contain:

(a) the caption of the case, with the names of the parties and the case number;

(b) the object of the action or defense; and

(c) the specific legal description of only the property affected.

(3) From the time of filing the notice, a purchaser, an encumbrancer of the property, or any other party in interest that may be affected by the action is considered to have constructive notice of pendency of action.

Section 120. Section **78B-6-1904** is amended to read:

### **78B-6-1904. Action -- Enforcement -- Remedies -- Damages.**

(1) (a) A target who has received a demand letter asserting patent infringement in bad faith, or a person aggrieved by a violation of this part, may bring an action ~~[in district court]~~ in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

(b) The court may award the following remedies to a target who prevails in an action brought pursuant to this part:

~~[(a)]~~ (i) equitable relief;

~~[(b)]~~ (ii) actual damages;

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~~(c)~~ (iii) costs and fees, including reasonable attorney fees; and

~~(d)~~ (iv) punitive damages in an amount to be established by the court, of not more than the greater of \$50,000 or three times the total of damages, costs, and fees.

(2) (a) The attorney general may conduct civil investigations and bring civil actions pursuant to this part.

(b) In an action brought by the attorney general under this part, the court may award or impose any relief ~~it~~ the court considers prudent, including the following:

~~(a)~~ (i) equitable relief;

~~(b)~~ (ii) statutory damages of not less than \$750 per demand letter distributed in bad faith; and

~~(c)~~ (iii) costs and fees, including reasonable attorney fees, to the attorney general.

(3) This part may not be construed to limit other rights and remedies available to the state or to any person under any other law.

(4) A demand letter or assertion of a patent infringement that includes a claim for relief arising under 35 U.S.C. Sec. 271(e)(2) is not subject to the provisions of this part.

(5) The attorney general shall annually provide an electronic report to the Executive Appropriations Committee regarding the number of investigations and actions brought under this part. The report shall include:

(a) the number of investigations commenced;

(b) the number of actions brought under the provisions of this part;

(c) the current status of actions brought under Subsection (5)(b); and

(d) final resolution of actions brought under this part, including any recovery under Subsection (2).

Section 121. Section **78B-6-1905** is amended to read:

### **78B-6-1905. Bond.**

(1) Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a sponsor has made a bad faith assertion of patent infringement in a demand letter in violation of this part, the court shall require the sponsor to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim under this part and amounts reasonably likely to be recovered under Subsections ~~[78B-6-1904(1)(b) and (c)]~~ 78B-6-1904(1)(b)(ii) and (iii), conditioned upon payment of any amounts finally determined to

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be due to the target.

(2) A hearing on the appropriateness and amount of a bond under this section shall be held if either party requests it.

(3) A bond ordered pursuant to this section may not exceed \$250,000. The court may waive the bond requirement if it finds the sponsor has available assets equal to the amount of the proposed bond or for other good cause shown.

Section 122. Section **78B-21-102** is amended to read:

### **78B-21-102. Definitions.**

As used in this chapter:

(1) "Affiliate" means:

(a) with respect to an individual:

(i) a companion of the individual;

(ii) a lineal ancestor or descendant, whether by blood or adoption, of:

(A) the individual; or

(B) a companion of the individual;

(iii) a companion of an ancestor or descendant described in Subsection (1)(a)(ii);

(iv) a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual; or

(v) any other individual occupying the residence of the individual; and

(b) with respect to a person other than an individual:

(i) another person that directly or indirectly controls, is controlled by, or is under common control with the person;

(ii) an officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person; or

(iii) a companion of, or an individual occupying the residence of, an individual described in Subsection (1)(b)(i) or (ii).

(2) "Companion" means:

(a) the spouse of an individual;

(b) the domestic partner of an individual; or

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(c) another individual in a civil union with an individual.

(3) "Court" means a [~~district court in the state~~] court of this state with jurisdiction over the action under Title 78A, Judiciary and Judicial Administration.

(4) "Executory contract" means a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach.

(5) "Governmental unit" means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state.

(6) "Lien" means an interest in property that secures payment or performance of an obligation.

(7) "Mortgage" means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if the mortgage also creates or provides for a lien on personal property.

(8) "Mortgagee" means a person entitled to enforce an obligation secured by a mortgage.

(9) "Mortgagor" means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.

(10) "Owner" means the person for whose property a receiver is appointed.

(11) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(12) "Proceeds" means the following property:

(a) whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property;

(b) whatever is collected on, or distributed on account of, receivership property;

(c) rights arising out of receivership property;

(d) to the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property; or

(e) to the extent of the value of receivership property and to the extent payable to the owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or

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infringement of rights in, or damage to the property.

(13) "Property" means all of a person's right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired. The term includes proceeds, products, offspring, rents, or profits of or from the property.

(14) "Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by this chapter or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

(15) "Receivership" means a proceeding in which a receiver is appointed.

(16) "Receivership property" means the property of an owner that is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

(17) "Record" means, when used as a noun, information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(18) "Rents" means:

(a) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(b) sums payable to a mortgagor under a policy of rental-interruption insurance covering real property;

(c) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(d) sums payable to terminate an agreement to possess or occupy real property of another person;

(e) sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property; or

(f) other sums payable under an agreement relating to the real property of another person which constitute rents under law of the state other than this chapter.

(19) "Secured obligation" means an obligation the payment or performance of which is

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secured by a security agreement.

(20) "Security agreement" means an agreement that creates or provides for a lien.

(21) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

Section 123. **Repealer.**

This bill repeals:

Section 3-1-20.2, **Procedure for judicial dissolution.**

Section 16-6a-1415, **Procedure for judicial dissolution.**

Section 16-10a-1431, **Procedure for judicial dissolution.**

Section 34-34-14, **Jurisdiction.**

Section 78B-3-305, **Transitory actions -- Residence of corporations.**

Section 78B-3-306, **Arising without this state in favor of resident.**

Section 78B-3-308, **Change of venue -- Conditions precedent.**

Section 78B-3-309, **Grounds.**

Section 78B-3-310, **Court to which transfer is to be made.**

Section 78B-3-311, **Duty of clerk -- Fees and costs -- Effect on jurisdiction.**

Section 124. **Effective date.**

This bill takes effect on July 1, 2024.

**Section 125. Coordinating H.B. 251 with S.B. 129 -- Superseding technical and substantive amendments.**

If this H.B. 251 and S.B. 129, Judiciary Amendments, both pass and become law, the Legislature intends that, on July 1, 2024, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 31A-5-414 in H.B. 251 supersede the amendments to Section 31A-5-414 in S.B. 129;

(2) the amendments to Section 31A-5-415 in H.B. 251 supersede the amendments to Section 31A-5-415 in S.B. 129; and

(3) the amendments to Section 31A-16-111 in H.B. 251 supersede the amendments to Section 31A-16-111 in S.B. 129.



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### Section 126. Revisor instructions.

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, not enroll this bill if H.B. 216, Business and Chancery Court Amendments, does not pass.