

SB0166S01 compared with SB0166

~~{deleted text}~~ shows text that was in SB0166 but was deleted in SB0166S01.

inserted text shows text that was not in SB0166 but was inserted into SB0166S01.

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Senator Lincoln Fillmore proposes the following substitute bill:

EDUCATION ENTITY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill ~~{defines "}~~provides a home-based education entity~~{"~~ and ~~{"~~micro-education entity~~{"~~ ~~and provides these entities and students of these entities}~~ with certain similar duties, requirements, waivers, and rights as private and charter schools.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a county and municipality to consider micro-education and home-based education entities as a permitted use in all zoning districts within a county and municipality;
- ▶ ~~{subjects}~~ identifies the occupancy requirements to which a micro-education entity ~~{to the same occupancy requirements for Class B Occupancy and prevents a}~~ is

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subject:

- ▶ requires a local school board to excuse a student of a micro-education entity or home-based education entity ~~{from being subject to any occupancy requirements beyond a primary dwelling requirements;~~

→ defines:

- education cooperative;
- extracurricular lessons;
- home-based education entity; and
- micro-education entity;

→ ~~exempts~~ under certain circumstances:

- ▶ provides that an instructor of a school-age child who attends a micro-education entity ~~{and a}~~ or home-based education entity ~~{from immunization requirements and compulsory education requirements}~~ is solely responsible for instruction, materials, and evaluation;
- ▶ prohibits a local school board from requiring a micro-education entity or home-based education entity to provide teaching credentials, submit to inspection, and conduct testing;
- ▶ prevents government entities from regulating micro-education entity and home-based education entity ~~{instructors, student assessments, and }~~ food preparation and distribution under certain circumstances;
- ▶ allows students in a micro-education entity or home-based education entity to ~~{be dual enrolled or }~~ participate in extracurricular activities in a public school;
- ▶ exempts a student of a micro-education entity or a home-based education entity from immunization requirements; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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10-9a-103, as last amended by Laws of Utah 2022, Chapters 355, 406

10-9a-305, as last amended by Laws of Utah 2021, Chapter 35

10-9a-529, as last amended by Laws of Utah 2021, Chapter 385

17-27a-103, as last amended by Laws of Utah 2022, Chapter 406

17-27a-305, as last amended by Laws of Utah 2021, Chapter 35

32B-1-102, as last amended by Laws of Utah 2022, Chapter 447

53G-6-201, as last amended by Laws of Utah 2021, Chapters 113, 261 and 427

~~{ 53G-6-202, as last amended by Laws of Utah 2021, Chapter 359 and further amended
by Revisor Instructions, Laws of Utah 2021, Chapter 359~~

~~53G-6-203, as last amended by Laws of Utah 2021, Chapter 359~~

~~{~~ ~~53G-6-206~~ 53G-6-204, as last amended by Laws of Utah 2021, Chapter ~~{262}~~ 359

53G-6-702, as last amended by Laws of Utah 2020, Chapter 408

53G-6-703, as last amended by Laws of Utah 2019, Chapter 293

53G-6-706, as last amended by Laws of Utah 2019, Chapter 293

~~{53G-9-302}~~ 53G-9-301, as ~~{renumbered and}~~ last amended by Laws of Utah
~~{2018}~~ 2022, Chapter ~~{3}~~ 255

ENACTS:

53G-6-212, Utah Code Annotated 1953

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

Section 1. Section 10-9a-103 is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.

(2) "Adversely affected party" means a person other than a land use applicant who:

(a) owns real property adjoining the property that is the subject of a land use application or land use decision; or

(b) will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.

(3) "Affected entity" means a county, municipality, local district, special service

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district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(4) "Affected owner" means the owner of real property that is:

(a) a single project;

(b) the subject of a land use approval that sponsors of a referendum timely challenged in accordance with Subsection 20A-7-601(6); and

(c) determined to be legally referable under Section 20A-7-602.8.

(5) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(6) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(7) (a) "Charter school" means:

(i) an operating charter school;

(ii) a charter school applicant that a charter school authorizer approves in accordance with Title 53G, Chapter 5, Part 3, Charter School Authorization; or

(iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(b) "Charter school" does not include a therapeutic school.

(8) "Conditional use" means a land use that, because of the unique characteristics or potential impact of the land use on the municipality, surrounding neighbors, or adjacent land

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uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(9) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

- (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
- (b) Utah Constitution Article I, Section 22.

(10) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(11) "Development activity" means:

- (a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;
- (b) any change in use of a building or structure that creates additional demand and need for public facilities; or
- (c) any change in the use of land that creates additional demand and need for public facilities.

(12) (a) "Development agreement" means a written agreement or amendment to a written agreement between a municipality and one or more parties that regulates or controls the use or development of a specific area of land.

(b) "Development agreement" does not include an improvement completion assurance.

(13) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(14) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

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- (ii) a structure or facility:
 - (A) located on the same property as a building described in Subsection (14)(a)(i); and
 - (B) used in support of the use of that building; and
- (iii) a building to provide office and related space to a school district's administrative personnel; and
- (b) does not include:
 - (i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:
 - (A) not located on the same property as a building described in Subsection (14)(a)(i); and
 - (B) used in support of the purposes of a building described in Subsection (14)(a)(i); or
 - (ii) a therapeutic school.
- (15) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.
- (16) "Flood plain" means land that:
 - (a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or
 - (b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.
- (17) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.
- (18) "Geologic hazard" means:
 - (a) a surface fault rupture;
 - (b) shallow groundwater;
 - (c) liquefaction;
 - (d) a landslide;
 - (e) a debris flow;
 - (f) unstable soil;

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- (g) a rock fall; or
- (h) any other geologic condition that presents a risk:
 - (i) to life;
 - (ii) of substantial loss of real property; or
 - (iii) of substantial damage to real property.

(19) "Historic preservation authority" means a person, board, commission, or other body designated by a legislative body to:

- (a) recommend land use regulations to preserve local historic districts or areas; and
- (b) administer local historic preservation land use regulations within a local historic district or area.

(20) "Home-based education entity" means the same as that term is defined in Section 53G-6-201.

~~(20)~~ (21) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

~~(21)~~ (22) "Identical plans" means building plans submitted to a municipality that:

- (a) are clearly marked as "identical plans";
- (b) are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality; and
- (c) describe a building that:
 - (i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;
 - (ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;
 - (iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and
 - (iv) does not require any additional engineering or analysis.

~~(22)~~ (23) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

~~(23)~~ (24) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required

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by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

- (a) recording a subdivision plat; or
- (b) development of a commercial, industrial, mixed use, or multifamily project.

~~[(24)]~~ [(25)] "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

- (a) complies with the municipality's written standards for design, materials, and workmanship; and
- (b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

~~[(25)]~~ [(26)] "Improvement warranty period" means a period:

- (a) no later than one year after a municipality's acceptance of required landscaping; or
- (b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:

- (i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and

- (ii) has substantial evidence, on record:

- (A) of prior poor performance by the applicant; or

- (B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.

~~[(26)]~~ [(27)] "Infrastructure improvement" means permanent infrastructure that is essential for the public health and safety or that:

~~{~~ { (a) is required for human occupation; and

(b) an applicant must install:

- (i) in accordance with published installation and inspection specifications for public improvements; and

- (ii) whether the improvement is public or private, as a condition of:

- (A) recording a subdivision plat;

- (B) obtaining a building permit; or

- (C) development of a commercial, industrial, mixed use, condominium, or multifamily project.

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~~[(27)]~~ [(28)] "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

~~[(28)]~~ [(29)] "Land use applicant" means a property owner, or the property owner's designee, who submits a land use application regarding the property owner's land.

~~[(29)]~~ [(30)] "Land use application":

(a) means an application that is:

(i) required by a municipality; and

(ii) submitted by a land use applicant to obtain a land use decision; and

(b) does not mean an application to enact, amend, or repeal a land use regulation.

~~[(30)]~~ [(31)] "Land use authority" means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

~~[(31)]~~ [(32)] "Land use decision" means an administrative decision of a land use authority or appeal authority regarding:

(a) a land use permit; or

(b) a land use application.

~~[(32)]~~ [(33)] "Land use permit" means a permit issued by a land use authority.

~~[(33)]~~ [(34)] "Land use regulation":

(a) means a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land;

(b) includes the adoption or amendment of a zoning map or the text of the zoning code; and

(c) does not include:

(i) a land use decision of the legislative body acting as the land use authority, even if

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the decision is expressed in a resolution or ordinance; or

(ii) a temporary revision to an engineering specification that does not materially:

(A) increase a land use applicant's cost of development compared to the existing specification; or

(B) impact a land use applicant's use of land.

~~[(34)]~~ (35) "Legislative body" means the municipal council.

~~[(35)]~~ (36) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

~~[(36)]~~ (37) "Local historic district or area" means a geographically definable area that:

(a) contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body; and

(b) is subject to land use regulations to preserve the historic significance of the local historic district or area.

~~[(37)]~~ (38) "Lot" means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder.

~~[(38)]~~ (39) (a) "Lot line adjustment" means a relocation of a lot line boundary between adjoining lots or between a lot and adjoining parcels in accordance with Section 10-9a-608:

(i) whether or not the lots are located in the same subdivision; and

(ii) with the consent of the owners of record.

(b) "Lot line adjustment" does not mean a new boundary line that:

(i) creates an additional lot; or

(ii) constitutes a subdivision.

(c) "Lot line adjustment" does not include a boundary line adjustment made by the Department of Transportation.

~~[(39)]~~ (40) "Major transit investment corridor" means public transit service that uses or occupies:

(a) public transit rail right-of-way;

(b) dedicated road right-of-way for the use of public transit, such as bus rapid transit;

or

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(c) fixed-route bus corridors subject to an interlocal agreement or contract between a municipality or county and:

- (i) a public transit district as defined in Section 17B-2a-802; or
- (ii) an eligible political subdivision as defined in Section 59-12-2219.

(41) "Micro-education entity" means the same as that term is defined in Section 53G-6-201.

~~[(40)]~~ (42) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

~~[(41)]~~ (43) "Municipal utility easement" means an easement that:

- (a) is created or depicted on a plat recorded in a county recorder's office and is described as a municipal utility easement granted for public use;
- (b) is not a protected utility easement or a public utility easement as defined in Section 54-3-27;
- (c) the municipality or the municipality's affiliated governmental entity uses and occupies to provide a utility service, including sanitary sewer, culinary water, electrical, storm water, or communications or data lines;
- (d) is used or occupied with the consent of the municipality in accordance with an authorized franchise or other agreement;
- (e) (i) is used or occupied by a specified public utility in accordance with an authorized franchise or other agreement; and
 - (ii) is located in a utility easement granted for public use; or
- (f) is described in Section 10-9a-529 and is used by a specified public utility.

~~[(42)]~~ (44) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

- (a) verifying that building plans are identical plans; and
- (b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

~~[(43)]~~ (45) "Noncomplying structure" means a structure that:

- (a) legally existed before the structure's current land use designation; and
- (b) because of one or more subsequent land use ordinance changes, does not conform

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to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

~~[(44)]~~ (46) "Nonconforming use" means a use of land that:

- (a) legally existed before its current land use designation;
- (b) has been maintained continuously since the time the land use ordinance governing the land changed; and
- (c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

~~[(45)]~~ (47) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

- (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;
- (b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
- (c) has been adopted as an element of the municipality's general plan.

~~[(46)]~~ (48) "Parcel" means any real property that is not a lot.

~~[(47)]~~ (49) (a) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining parcels adjusting the mutual boundary, either by deed or by a boundary line agreement in accordance with Section 10-9a-524, if no additional parcel is created and:

- (i) none of the property identified in the agreement is a lot; or
 - (ii) the adjustment is to the boundaries of a single person's parcels.
- (b) "Parcel boundary adjustment" does not mean an adjustment of a parcel boundary line that:
- (i) creates an additional parcel; or
 - (ii) constitutes a subdivision.
- (c) "Parcel boundary adjustment" does not include a boundary line adjustment made by the Department of Transportation.

~~[(48)]~~ (50) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

~~[(49)]~~ (51) "Plan for moderate income housing" means a written document adopted by

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a municipality's legislative body that includes:

- (a) an estimate of the existing supply of moderate income housing located within the municipality;
- (b) an estimate of the need for moderate income housing in the municipality for the next five years;
- (c) a survey of total residential land use;
- (d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and
- (e) a description of the municipality's program to encourage an adequate supply of moderate income housing.

~~[(50)]~~ [(52)] "Plat" means an instrument subdividing property into lots as depicted on a map or other graphical representation of lands that a licensed professional land surveyor makes and prepares in accordance with Section 10-9a-603 or 57-8-13.

~~[(51)]~~ [(53)] "Potential geologic hazard area" means an area that:

- (a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or
- (b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

~~[(52)]~~ [(54)] "Public agency" means:

- (a) the federal government;
- (b) the state;
- (c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or
- (d) a charter school.

~~[(53)]~~ [(55)] "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

~~[(54)]~~ [(56)] "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

~~[(55)]~~ [(57)] "Public street" means a public right-of-way, including a public highway,

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public avenue, public boulevard, public parkway, public road, public lane, public alley, public viaduct, public subway, public tunnel, public bridge, public byway, other public transportation easement, or other public way.

~~[(56)]~~ [(58)] "Receiving zone" means an area of a municipality that the municipality designates, by ordinance, as an area in which an owner of land may receive a transferable development right.

~~[(57)]~~ [(59)] "Record of survey map" means a map of a survey of land prepared in accordance with Section 10-9a-603, 17-23-17, 17-27a-603, or 57-8-13.

~~[(58)]~~ [(60)] "Residential facility for persons with a disability" means a residence:

- (a) in which more than one person with a disability resides; and
- (b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
- (ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

~~[(59)]~~ [(61)] "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

- (a) parliamentary order and procedure;
- (b) ethical behavior; and
- (c) civil discourse.

~~[(60)]~~ [(62)] "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

~~[(61)]~~ [(63)] "Sending zone" means an area of a municipality that the municipality designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

~~[(62)]~~ [(64)] "Specified public agency" means:

- (a) the state;
- (b) a school district; or
- (c) a charter school.

~~[(63)]~~ [(65)] "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

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~~[(64)]~~ [(66)] "State" includes any department, division, or agency of the state.

~~[(65)]~~ [(67)] (a) "Subdivision" means any land that is divided, resubdivided, or proposed to be divided into two or more lots or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land, whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument, regardless of whether the division includes all or a portion of a parcel or lot; and

(ii) except as provided in Subsection ~~[(65)(c)]~~ [(67)(c)], divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a boundary line agreement recorded with the county recorder's office between owners of adjoining parcels adjusting the mutual boundary in accordance with Section 10-9a-524 if no new parcel is created;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal descriptions of multiple parcels into one legal description encompassing all such parcels; or

(B) joining a lot to a parcel;

(iv) a boundary line agreement between owners of adjoining subdivided properties adjusting the mutual lot line boundary in accordance with Sections 10-9a-524 and 10-9a-608 if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(v) a bona fide division of land by deed or other instrument if the deed or other instrument states in writing that the division:

(A) is in anticipation of future land use approvals on the parcel or parcels;

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- (B) does not confer any land use approvals; and
- (C) has not been approved by the land use authority;
- (vi) a parcel boundary adjustment;
- (vii) a lot line adjustment;
- (viii) a road, street, or highway dedication plat;
- (ix) a deed or easement for a road, street, or highway purpose; or
- (x) any other division of land authorized by law.

~~[(66)]~~ [(68)] "Subdivision amendment" means an amendment to a recorded subdivision in accordance with Section 10-9a-608 that:

- (a) vacates all or a portion of the subdivision;
- (b) alters the outside boundary of the subdivision;
- (c) changes the number of lots within the subdivision;
- (d) alters a public right-of-way, a public easement, or public infrastructure within the subdivision; or
- (e) alters a common area or other common amenity within the subdivision.

~~[(67)]~~ [(69)] "Substantial evidence" means evidence that:

- (a) is beyond a scintilla; and
- (b) a reasonable mind would accept as adequate to support a conclusion.

~~[(68)]~~ [(70)] "Suspect soil" means soil that has:

- (a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;
- (b) bedrock units with high shrink or swell susceptibility; or
- (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

~~[(69)]~~ [(71)] "Therapeutic school" means a residential group living facility:

- (a) for four or more individuals who are not related to:
 - (i) the owner of the facility; or
 - (ii) the primary service provider of the facility;
- (b) that serves students who have a history of failing to function:
 - (i) at home;
 - (ii) in a public school; or

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(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

~~[(70)]~~ [(72)] "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

~~[(71)]~~ [(73)] "Unincorporated" means the area outside of the incorporated area of a city or town.

~~[(72)]~~ [(74)] "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

~~[(73)]~~ [(75)] "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section 10-9a-305 is amended to read:

10-9a-305. Other entities required to conform to municipality's land use ordinances -- Exceptions -- ~~{School districts and}~~ A school district, charter {schools} school, micro-education entity, and home-based education entity -- Submission of development plan and schedule.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality.

(b) In addition to any other remedies provided by law, when a municipality's land use ordinance is violated or about to be violated by another political subdivision, that municipality may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to

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prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Except as provided in Subsection (3), a school district or charter school is subject to a municipality's land use ordinances.

(b) (i) Notwithstanding Subsection (3), a municipality may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (3)(f).

(ii) The standards to which a municipality may subject a charter school under Subsection (2)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (7)(d), the only basis upon which a municipality may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (2)(b)(i).

(iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(3) A municipality may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, municipal building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria

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established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36a, Impact Fees Act;

(f) impose regulations upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety; or

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(4) Subject to Section 53E-3-710, a school district or charter school shall coordinate the siting of a new school with the municipality in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(5) Notwithstanding Subsection (3)(d), a municipality may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:

(i) a municipal building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a municipal building inspector; or

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(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (6)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and municipal building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(7) (a) A charter school, micro-education entity, or home-based education entity shall be considered a permitted use in all zoning districts within a municipality.

(b) Each land use application for any approval required for a charter school, micro-education entity, or home-based education entity, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school or a micro-education entity may not exceed the minimum parking requirements for schools or other institutional public uses throughout the municipality.

(d) If a municipality has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school or a micro-education entity may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school or micro-education entity provides a waiver.

(e) (i) A school district, micro-education entity, or [a] charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53E-3-706(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a municipal official with authority to issue the certificate, if the school district, micro-education entity, or charter school used a municipal building inspector for inspection of the school building.

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(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53E-3-706(3)(a)(ii).

(iii) A charter school or micro-education entity may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school or micro-education entity used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53E-3-706(3) or a school district official with authority to issue the certificate shall be considered to satisfy any municipal requirement for an inspection or a certificate of occupancy.

(f) (i) A micro-education entity may operate in a facility that meets Group E Occupancy requirements as defined by the International Building Code, as incorporated by Subsection 15A-2-103(1)(a).

(ii) A micro-education entity operating in a facility described in Subsection (7)(f)(i):

(A) may have up to 100 students in that facility; and

(B) shall have enough space for at least 20 net square feet per student.

(g) A micro-education entity may operate in a facility that is subject to and complies with the same occupancy requirements as a Class B Occupancy as defined by the International Building Code, as incorporated by Subsection 15A-2-103(1)(a), if:

(i) the facility has a code-compliant fire alarm system and carbon monoxide detection system;

(ii) (A) each classroom in the facility has an exit directly to the outside at the level of exit discharge; or

(B) the structure has a code compliant fire sprinkler system;

(iii) the facility has an automatic fire sprinkler system in fire areas of the facility that are greater than 12,000 square feet; and

(iv) the facility has enough space for at least 20 net square feet per student.

(h) A home-based education entity is not subject to additional occupancy requirements beyond occupancy requirements that apply to a primary dwelling, except that the home-based education entity shall have enough space for at least 35 net square feet per student.

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(8) (a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections 11-36a-102(17)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee described in Section 10-9a-510;

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (8)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (8)(a)(ii) in the process of preparing the budget for the development.

(9) Nothing in this section may be construed to:

(a) modify or supersede Section 10-9a-304; or

(b) authorize a municipality to enforce an ordinance in a way, or enact an ordinance, that fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, or any other provision of federal law.

(10) Nothing in Subsection (7) prevents a political subdivision from:

(a) requiring a micro-education entity or home-based education entity to comply with municipal zoning and land use regulations that do not conflict with this section, including:

(i) parking;

(ii) traffic; and

(iii) hours of operation;

(b) requiring a micro-education entity or home-based education entity to obtain a business license;

(c) enacting municipal ordinances and regulations consistent with this section;

(d) subjecting a micro-education entity to standards within each zone pertaining to

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setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(e) imposing regulations on the location of a project that are necessary to avoid risks to health or safety.

Section 3. Section 10-9a-529 is amended to read:

10-9a-529. Specified public utility located in a municipal utility easement.

A specified public utility may exercise each power of a public utility under Section 54-3-27 if the specified public utility uses an easement:

- (1) with the consent of a municipality; and
- (2) that is located within a municipal utility easement described in Subsections

~~[10-9a-103(41)]~~ 10-9a-103(43)(a) through (e).

Section 4. Section 17-27a-103 is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.

(2) "Adversely affected party" means a person other than a land use applicant who:

(a) owns real property adjoining the property that is the subject of a land use application or land use decision; or

(b) will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.

(3) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owner's association, public utility, or the ~~[Utah]~~ Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the county a copy of the entity's general or long-range plan;

or

(c) the entity has filed with the county a request for notice during the same calendar

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year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(4) "Affected owner" means the owner of real property that is:

(a) a single project;

(b) the subject of a land use approval that sponsors of a referendum timely challenged in accordance with Subsection 20A-7-601(6); and

(c) determined to be legally referable under Section 20A-7-602.8.

(5) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(6) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(7) (a) "Charter school" means:

(i) an operating charter school;

(ii) a charter school applicant that a charter school authorizer approves in accordance with Title 53G, Chapter 5, Part 3, Charter School Authorization; or

(iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(b) "Charter school" does not include a therapeutic school.

(8) "Chief executive officer" means the person or body that exercises the executive powers of the county.

(9) "Conditional use" means a land use that, because of the unique characteristics or potential impact of the land use on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(10) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution, Article I, Section 22.

(11) "County utility easement" means an easement that:

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(a) a plat recorded in a county recorder's office described as a county utility easement or otherwise as a utility easement;

(b) is not a protected utility easement or a public utility easement as defined in Section 54-3-27;

(c) the county or the county's affiliated governmental entity owns or creates; and

(d) (i) either:

(A) no person uses or occupies; or

(B) the county or the county's affiliated governmental entity uses and occupies to provide a utility service, including sanitary sewer, culinary water, electrical, storm water, or communications or data lines; or

(ii) a person uses or occupies with or without an authorized franchise or other agreement with the county.

(12) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(13) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(14) (a) "Development agreement" means a written agreement or amendment to a written agreement between a county and one or more parties that regulates or controls the use or development of a specific area of land.

(b) "Development agreement" does not include an improvement completion assurance.

(15) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.

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(16) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (16)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (16)(a)(i);

and

(B) used in support of the purposes of a building described in Subsection (16)(a)(i); or

(ii) a therapeutic school.

(17) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(18) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(19) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(20) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of:

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- (a) the unincorporated land within the county; or
- (b) for a mountainous planning district, the land within the mountainous planning district.

(21) "Geologic hazard" means:

- (a) a surface fault rupture;
- (b) shallow groundwater;
- (c) liquefaction;
- (d) a landslide;
- (e) a debris flow;
- (f) unstable soil;
- (g) a rock fall; or
- (h) any other geologic condition that presents a risk:
 - (i) to life;
 - (ii) of substantial loss of real property; or
 - (iii) of substantial damage to real property.

(22) "Home-based education entity" means the same as that term is defined in Section 53G-6-201.

~~[(22)]~~ (23) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility system.

~~[(23)]~~ (24) "Identical plans" means building plans submitted to a county that:

- (a) are clearly marked as "identical plans";
- (b) are substantially identical building plans that were previously submitted to and reviewed and approved by the county; and
- (c) describe a building that:
 - (i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;
 - (ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;
 - (iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the county; and

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(iv) does not require any additional engineering or analysis.

~~[(24)]~~ [(25)] "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

~~[(25)]~~ [(26)] "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a county to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

- (a) recording a subdivision plat; or
- (b) development of a commercial, industrial, mixed use, or multifamily project.

~~[(26)]~~ [(27)] "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

- (a) complies with the county's written standards for design, materials, and workmanship; and
- (b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

~~[(27)]~~ [(28)] "Improvement warranty period" means a period:

- (a) no later than one year after a county's acceptance of required landscaping; or
- (b) no later than one year after a county's acceptance of required infrastructure, unless the county:
 - (i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and
 - (ii) has substantial evidence, on record:
 - (A) of prior poor performance by the applicant; or
 - (B) that the area upon which the infrastructure will be constructed contains suspect soil and the county has not otherwise required the applicant to mitigate the suspect soil.

~~[(28)]~~ [(29)] "Infrastructure improvement" means permanent infrastructure that is essential for the public health and safety or that:

- (a) is required for human consumption; and
- (b) an applicant must install:
 - (i) in accordance with published installation and inspection specifications for public improvements; and

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(ii) as a condition of:

(A) recording a subdivision plat;

(B) obtaining a building permit; or

(C) developing a commercial, industrial, mixed use, condominium, or multifamily project.

~~[(29)]~~ [(30)] "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

~~[(30)]~~ [(31)] "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

~~[(31)]~~ [(32)] "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

~~[(32)]~~ [(33)] "Land use applicant" means a property owner, or the property owner's designee, who submits a land use application regarding the property owner's land.

~~[(33)]~~ [(34)] "Land use application":

(a) means an application that is:

(i) required by a county; and

(ii) submitted by a land use applicant to obtain a land use decision; and

(b) does not mean an application to enact, amend, or repeal a land use regulation.

~~[(34)]~~ [(35)] "Land use authority" means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

~~[(35)]~~ [(36)] "Land use decision" means an administrative decision of a land use

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authority or appeal authority regarding:

- (a) a land use permit;
- (b) a land use application; or
- (c) the enforcement of a land use regulation, land use permit, or development

agreement.

~~[(36)]~~ (37) "Land use permit" means a permit issued by a land use authority.

~~[(37)]~~ (38) "Land use regulation":

(a) means a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land;

(b) includes the adoption or amendment of a zoning map or the text of the zoning code;

and

(c) does not include:

(i) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or

(ii) a temporary revision to an engineering specification that does not materially:

(A) increase a land use applicant's cost of development compared to the existing specification; or

(B) impact a land use applicant's use of land.

~~[(38)]~~ (39) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

~~[(39)]~~ (40) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

~~[(40)]~~ (41) "Lot" means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder.

~~[(41)]~~ (42) (a) "Lot line adjustment" means a relocation of a lot line boundary between adjoining lots or between a lot and adjoining parcels in accordance with Section 17-27a-608:

(i) whether or not the lots are located in the same subdivision; and

(ii) with the consent of the owners of record.

(b) "Lot line adjustment" does not mean a new boundary line that:

(i) creates an additional lot; or

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(ii) constitutes a subdivision.

(c) "Lot line adjustment" does not include a boundary line adjustment made by the Department of Transportation.

~~[(42)]~~ (43) "Major transit investment corridor" means public transit service that uses or occupies:

(a) public transit rail right-of-way;

(b) dedicated road right-of-way for the use of public transit, such as bus rapid transit;

or

(c) fixed-route bus corridors subject to an interlocal agreement or contract between a municipality or county and:

(i) a public transit district as defined in Section 17B-2a-802; or

(ii) an eligible political subdivision as defined in Section 59-12-2219.

(44) "Micro-education entity" means the same as that term is defined in Section 53G-6-201.

~~[(43)]~~ (45) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

~~[(44)]~~ (46) "Mountainous planning district" means an area designated by a county legislative body in accordance with Section 17-27a-901.

~~[(45)]~~ (47) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

~~[(46)]~~ (48) "Noncomplying structure" means a structure that:

(a) legally existed before the structure's current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

~~[(47)]~~ (49) "Nonconforming use" means a use of land that:

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- (a) legally existed before the current land use designation;
- (b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and
- (c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

~~[(48)]~~ (50) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

- (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;
- (b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
- (c) has been adopted as an element of the county's general plan.

~~[(49)]~~ (51) "Parcel" means any real property that is not a lot.

~~[(50)]~~ (52) (a) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining parcels adjusting the mutual boundary, either by deed or by a boundary line agreement in accordance with Section 17-27a-523, if no additional parcel is created and:

- (i) none of the property identified in the agreement is a lot; or
- (ii) the adjustment is to the boundaries of a single person's parcels.

(b) "Parcel boundary adjustment" does not mean an adjustment of a parcel boundary line that:

- (i) creates an additional parcel; or
- (ii) constitutes a subdivision.

(c) "Parcel boundary adjustment" does not include a boundary line adjustment made by the Department of Transportation.

~~[(51)]~~ (53) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

~~[(52)]~~ (54) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

- (a) an estimate of the existing supply of moderate income housing located within the county;

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(b) an estimate of the need for moderate income housing in the county for the next five years;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the county's program to encourage an adequate supply of moderate income housing.

~~[(53)]~~ [(55)] "Planning advisory area" means a contiguous, geographically defined portion of the unincorporated area of a county established under this part with planning and zoning functions as exercised through the planning advisory area planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority.

~~[(54)]~~ [(56)] "Plat" means an instrument subdividing property into lots as depicted on a map or other graphical representation of lands that a licensed professional land surveyor makes and prepares in accordance with Section 17-27a-603 or 57-8-13.

~~[(55)]~~ [(57)] "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

~~[(56)]~~ [(58)] "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

~~[(57)]~~ [(59)] "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

~~[(58)]~~ [(60)] "Public meeting" means a meeting that is required to be open to the public

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under Title 52, Chapter 4, Open and Public Meetings Act.

~~[(59)]~~ [(61)] "Public street" means a public right-of-way, including a public highway, public avenue, public boulevard, public parkway, public road, public lane, public alley, public viaduct, public subway, public tunnel, public bridge, public byway, other public transportation easement, or other public way.

~~[(60)]~~ [(62)] "Receiving zone" means an unincorporated area of a county that the county designates, by ordinance, as an area in which an owner of land may receive a transferable development right.

~~[(61)]~~ [(63)] "Record of survey map" means a map of a survey of land prepared in accordance with Section 10-9a-603, 17-23-17, 17-27a-603, or 57-8-13.

~~[(62)]~~ [(64)] "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) which is licensed or certified by the Department of Health and Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) which is licensed or certified by the Department of Health and Human Services under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

~~[(63)]~~ [(65)] "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

~~[(64)]~~ [(66)] "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

~~[(65)]~~ [(67)] "Sending zone" means an unincorporated area of a county that the county designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

~~[(66)]~~ [(68)] "Site plan" means a document or map that may be required by a county during a preliminary review preceding the issuance of a building permit to demonstrate that an owner's or developer's proposed development activity meets a land use requirement.

~~[(67)]~~ [(69)] "Specified public agency" means:

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- (a) the state;
- (b) a school district; or
- (c) a charter school.

~~[(68)]~~ (70) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

~~[(69)]~~ (71) "State" includes any department, division, or agency of the state.

~~[(70)]~~ (72) (a) "Subdivision" means any land that is divided, resubdivided, or proposed to be divided into two or more lots or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land, whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument, regardless of whether the division includes all or a portion of a parcel or lot; and

(ii) except as provided in Subsection ~~[(70)(c)]~~ (72)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

(ii) a boundary line agreement recorded with the county recorder's office between owners of adjoining parcels adjusting the mutual boundary in accordance with Section 17-27a-523 if no new lot is created;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal descriptions of multiple parcels into one legal description encompassing all such parcels; or

(B) joining a lot to a parcel;

(iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(A) an electrical transmission line or a substation;

(B) a natural gas pipeline or a regulation station; or

(C) an unmanned telecommunications, microwave, fiber optic, electrical, or other

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utility service regeneration, transformation, retransmission, or amplification facility;

(v) a boundary line agreement between owners of adjoining subdivided properties adjusting the mutual lot line boundary in accordance with Sections 17-27a-523 and 17-27a-608 if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(vi) a bona fide division of land by deed or other instrument if the deed or other instrument states in writing that the division:

(A) is in anticipation of future land use approvals on the parcel or parcels;

(B) does not confer any land use approvals; and

(C) has not been approved by the land use authority;

(vii) a parcel boundary adjustment;

(viii) a lot line adjustment;

(ix) a road, street, or highway dedication plat;

(x) a deed or easement for a road, street, or highway purpose; or

(xi) any other division of land authorized by law.

~~[(71)]~~ (73) "Subdivision amendment" means an amendment to a recorded subdivision in accordance with Section 17-27a-608 that:

(a) vacates all or a portion of the subdivision;

(b) alters the outside boundary of the subdivision;

(c) changes the number of lots within the subdivision;

(d) alters a public right-of-way, a public easement, or public infrastructure within the subdivision; or

(e) alters a common area or other common amenity within the subdivision.

~~[(72)]~~ (74) "Substantial evidence" means evidence that:

(a) is beyond a scintilla; and

(b) a reasonable mind would accept as adequate to support a conclusion.

~~[(73)]~~ (75) "Suspect soil" means soil that has:

(a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;

(b) bedrock units with high shrink or swell susceptibility; or

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(c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

~~[(74)]~~ [(76)] "Therapeutic school" means a residential group living facility:

(a) for four or more individuals who are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

~~[(75)]~~ [(77)] "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

~~[(76)]~~ [(78)] "Unincorporated" means the area outside of the incorporated area of a municipality.

~~[(77)]~~ [(79)] "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

~~[(78)]~~ [(80)] "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section ~~{1}~~ 5. Section 17-27a-305 is amended to read:

17-27a-305. Other entities required to conform to county's land use ordinances --

Exceptions -- ~~{School districts and}~~ A school district, charter ~~{schools}~~ school,

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micro-education entity, and home-based education entity -- Submission of development plan and schedule.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any county when installing, constructing, operating, or otherwise using any area, land, or building situated within a mountainous planning district or the unincorporated portion of the county, as applicable.

(b) In addition to any other remedies provided by law, when a county's land use ordinance is violated or about to be violated by another political subdivision, that county may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Except as provided in Subsection (3), a school district or charter school is subject to a county's land use ordinances.

(b) (i) Notwithstanding Subsection (3), a county may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (3)(f).

(ii) The standards to which a county may subject a charter school under Subsection (2)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (7)(d), the only basis upon which a county may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (2)(b)(i).

(iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(3) A county may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, county building codes, building use for educational purposes, or the placement or use of temporary classroom facilities

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on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36a, Impact Fees Act;

(f) impose regulations upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety; or

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(4) Subject to Section 53E-3-710, a school district or charter school shall coordinate the siting of a new school with the county in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(5) Notwithstanding Subsection (3)(d), a county may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

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(6) (a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:

(i) a county building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a county building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (6)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and county building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(7) (a) A charter school, micro-education entity, or home-based education entity shall be considered a permitted use in all zoning districts within a county.

(b) Each land use application for any approval required for a charter school, a micro-education entity, or a home-based education entity, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school or a micro-education entity may not exceed the minimum parking requirements for schools or other institutional public uses throughout the county.

(d) If a county has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school or micro-education entity may be prohibited from a

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location which would otherwise defeat the purpose for the zone unless the charter school or micro-education entity provides a waiver.

(e) (i) A school district, micro-education entity, or [a] charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53E-3-706(3), if the school district, micro-education entity, or charter school used an independent building inspector for inspection of the school building; or

(B) a county official with authority to issue the certificate, if the school district, micro-education entity, or charter school used a county building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53E-3-706(3)(a)(ii).

(iii) A charter school or micro-education entity may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school or micro-education entity used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53E-3-706(3) or a school district official with authority to issue the certificate shall be considered to satisfy any county requirement for an inspection or a certificate of occupancy.

(f) ~~(i)~~ A micro-education entity ~~is subject to the same occupancy~~ may operate in a facility that meets Group E Occupancy requirements ~~as a Class B Occupancy~~ as defined by the International Building Code, as incorporated by Subsection 15A-2-103(1)(a).

~~(f)(g)~~ (ii) A micro-education entity operating in a facility described in Subsection (7)(f)(i):

(A) may have up to 100 students in that facility; and

(B) shall have enough space for at least 20 net square feet per student.

(g) A micro-education entity may operate in a facility that is subject to and complies with the same occupancy requirements as a Class B Occupancy as defined by the International Building Code, as incorporated by Subsection 15A-2-103(1)(a), if:

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(i) the facility has a code-compliant fire alarm system and carbon monoxide detection system;

(ii) (A) each classroom in the facility has an exit directly to the outside at the level of exit discharge; or

(B) the structure has a code compliant fire sprinkler system;

(iii) the facility has an automatic fire sprinkler system in fire areas of the facility that are greater than 12,000 square feet; and

(iv) the facility has enough space for at least 20 net square feet per student.

(h) A home-based education entity is not subject to additional occupancy requirements beyond ~~those required of~~ occupancy requirements that apply to a primary dwelling, except that the home-based education entity shall have enough space for at least 35 net square feet per student.

(8) (a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections 11-36a-102(17)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee described in Section 17-27a-509;

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (8)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (8)(a)(ii) in the process of preparing the budget for the development.

(9) Nothing in this section may be construed to:

(a) modify or supersede Section 17-27a-304; or

(b) authorize a county to enforce an ordinance in a way, or enact an ordinance, that fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing

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Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, or any other provision of federal law.

(10) Nothing in Subsection (7) prevents a political subdivision from:

(a) requiring a micro-education entity or home-based education entity to comply with local zoning and land use regulations that do not conflict with this section, including:

(i) parking;

(ii) traffic; and

(iii) hours of operation;

(b) requiring a micro-education entity or home-based education entity to obtain a business license;

(c) enacting county ordinances and regulations consistent with this section;

(d) subjecting a micro-education entity to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(e) imposing regulations on the location of a project that are necessary to avoid risks to health or safety.

Section 6. Section 32B-1-102 is amended to read:

32B-1-102. Definitions.

As used in this title:

(1) "Airport lounge" means a business location:

- (a) at which an alcoholic product is sold at retail for consumption on the premises; and
- (b) that is located at an international airport.

(2) "Airport lounge license" means a license issued in accordance with Chapter 5,

Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

(3) "Alcoholic beverage" means the following:

- (a) beer; or
- (b) liquor.

(4) (a) "Alcoholic product" means a product that:

- (i) contains at least .5% of alcohol by volume; and
- (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other

process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol

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in an amount equal to or greater than .5% of alcohol by volume.

(b) "Alcoholic product" includes an alcoholic beverage.

(c) "Alcoholic product" does not include any of the following common items that otherwise come within the definition of an alcoholic product:

(i) except as provided in Subsection (4)(d), an extract;

(ii) vinegar;

(iii) preserved nonintoxicating cider;

(iv) essence;

(v) tincture;

(vi) food preparation; or

(vii) an over-the-counter medicine.

(d) "Alcoholic product" includes an extract containing alcohol obtained by distillation when it is used as a flavoring in the manufacturing of an alcoholic product.

(5) "Alcohol training and education seminar" means a seminar that is:

(a) required by Chapter 1, Part 7, Alcohol Training and Education Act; and

(b) described in Section 62A-15-401.

(6) "Arena" means an enclosed building:

(a) that is managed by:

(i) the same person who owns the enclosed building;

(ii) a person who has a majority interest in each person who owns or manages a space in the enclosed building; or

(iii) a person who has authority to direct or exercise control over the management or policy of each person who owns or manages a space in the enclosed building;

(b) that operates as a venue; and

(c) that has an occupancy capacity of at least 12,500.

(7) "Arena license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8c, Arena License Act.

(8) "Banquet" means an event:

(a) that is a private event or a privately sponsored event;

(b) that is held at one or more designated locations approved by the commission in or on the premises of:

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- (i) a hotel;
- (ii) a resort facility;
- (iii) a sports center;
- (iv) a convention center;
- (v) a performing arts facility; or
- (vi) an arena;

(c) for which there is a contract:

(i) between a person operating a facility listed in Subsection (8)(b) and another person that has common ownership of less than 20% with the person operating the facility; and

(ii) under which the person operating a facility listed in Subsection (8)(b) is required to provide an alcoholic product at the event; and

(d) at which food and alcoholic products may be sold, offered for sale, or furnished.

(9) (a) "Bar establishment license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License.

(b) "Bar establishment license" includes:

- (i) a dining club license;
- (ii) an equity license;
- (iii) a fraternal license; or
- (iv) a bar license.

(10) "Bar license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License.

(11) (a) "Beer" means a product that:

(i) contains:

- (A) at least .5% of alcohol by volume; and
- (B) no more than 5% of alcohol by volume or 4% by weight;

(ii) is obtained by fermentation, infusion, or decoction of:

- (A) malt; or
- (B) a malt substitute; and

(iii) is clearly marketed, labeled, and identified as:

- (A) beer;
- (B) ale;

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- (C) porter;
- (D) stout;
- (E) lager;
- (F) a malt;
- (G) a malted beverage; or
- (H) seltzer.

(b) "Beer" may contain:

- (i) hops extract; or
- (ii) caffeine, if the caffeine is a natural constituent of an added ingredient.

(c) "Beer" does not include:

- (i) a flavored malt beverage;
- (ii) a product that contains alcohol derived from:

(A) spirituous liquor; or

(B) wine; or

(iii) a product that contains an additive masking or altering a physiological effect of alcohol, including kratom, kava, cannabidiol, or natural or synthetic tetrahydrocannabinol.

(12) "Beer-only restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-Only Restaurant License.

(13) "Beer retailer" means a business that:

(a) is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

(b) is licensed as:

(i) an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-Premise Beer Retailer Local Authority; or

(ii) an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-Premise Beer Retailer License.

(14) "Beer wholesaling license" means a license:

(a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

(b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers.

(15) "Billboard" means a public display used to advertise, including:

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- (a) a light device;
- (b) a painting;
- (c) a drawing;
- (d) a poster;
- (e) a sign;
- (f) a signboard; or
- (g) a scoreboard.

(16) "Brewer" means a person engaged in manufacturing:

- (a) beer;
- (b) heavy beer; or
- (c) a flavored malt beverage.

(17) "Brewery manufacturing license" means a license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License.

(18) "Certificate of approval" means a certificate of approval obtained from the department under Section 32B-11-201.

(19) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:

- (a) under a single contract;
- (b) at a fixed charge in accordance with the bus company's tariff; and
- (c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.

(20) "Church" means a building:

- (a) set apart for worship;
- (b) in which religious services are held;
- (c) with which clergy is associated; and
- (d) that is tax exempt under the laws of this state.

(21) "Commission" means the Alcoholic Beverage Services Commission created in Section 32B-2-201.

(22) "Commissioner" means a member of the commission.

(23) "Community location" means:

- (a) a public or private school;

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- (b) a church;
- (c) a public library;
- (d) a public playground; or
- (e) a public park.

(24) "Community location governing authority" means:

- (a) the governing body of the community location; or
- (b) if the commission does not know who is the governing body of a community

location, a person who appears to the commission to have been given on behalf of the community location the authority to prohibit an activity at the community location.

(25) "Container" means a receptacle that contains an alcoholic product, including:

- (a) a bottle;
- (b) a vessel; or
- (c) a similar item.

(26) "Controlled group of manufacturers" means as the commission defines by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(27) "Convention center" means a facility that is:

- (a) in total at least 30,000 square feet; and
- (b) otherwise defined as a "convention center" by the commission by rule.

(28) (a) "Counter" means a surface or structure in a dining area of a licensed premises where seating is provided to a patron for service of food.

(b) "Counter" does not include a dispensing structure.

(29) "Crime involving moral turpitude" is as defined by the commission by rule.

(30) "Department" means the Department of Alcoholic Beverage Services created in Section 32B-2-203.

(31) "Department compliance officer" means an individual who is:

- (a) an auditor or inspector; and
- (b) employed by the department.

(32) "Department sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling.

(33) "Dining club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License, that is designated by the

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commission as a dining club license.

(34) "Director," unless the context requires otherwise, means the director of the department.

(35) "Disciplinary proceeding" means an adjudicative proceeding permitted under this title:

(a) against a person subject to administrative action; and

(b) that is brought on the basis of a violation of this title.

(36) (a) Subject to Subsection (36)(b), "dispense" means:

(i) drawing an alcoholic product; and

(ii) using the alcoholic product at the location from which it was drawn to mix or prepare an alcoholic product to be furnished to a patron of the retail licensee.

(b) The definition of "dispense" in this Subsection (36) applies only to:

(i) a full-service restaurant license;

(ii) a limited-service restaurant license;

(iii) a reception center license;

(iv) a beer-only restaurant license;

(v) a bar license;

(vi) an on-premise beer retailer;

(vii) an airport lounge license;

(viii) an on-premise banquet license; and

(ix) a hospitality amenity license.

(37) "Dispensing structure" means a surface or structure on a licensed premises:

(a) where an alcoholic product is dispensed; or

(b) from which an alcoholic product is served.

(38) "Distillery manufacturing license" means a license issued in accordance with Chapter 11, Part 4, Distillery Manufacturing License.

(39) "Distressed merchandise" means an alcoholic product in the possession of the department that is saleable, but for some reason is unappealing to the public.

(40) "Equity license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License, that is designated by the commission as an equity license.

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(41) "Event permit" means:

- (a) a single event permit; or
- (b) a temporary beer event permit.

(42) "Exempt license" means a license exempt under Section 32B-1-201 from being considered in determining the total number of retail licenses that the commission may issue at any time.

(43) (a) "Flavored malt beverage" means a beverage:

- (i) that contains at least .5% alcohol by volume;
- (ii) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau under 27 C.F.R. Sec. 25.55 because the beverage is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer, ale, porter, stout, lager, or malt liquor; and

- (iii) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau under 27 C.F.R. Sec. 25.55 because the beverage includes an ingredient containing alcohol.

(b) "Flavored malt beverage" is considered liquor for purposes of this title.

(44) "Fraternal license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Bar Establishment License, that is designated by the commission as a fraternal license.

(45) "Full-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-Service Restaurant License.

(46) (a) "Furnish" means by any means to provide with, supply, or give an individual an alcoholic product, by sale or otherwise.

(b) "Furnish" includes to:

- (i) serve;
- (ii) deliver; or
- (iii) otherwise make available.

(47) "Guest" means an individual who meets the requirements of Subsection 32B-6-407(9).

(48) "Hard cider" means the same as that term is defined in 26 U.S.C. Sec. 5041.

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(49) "Health care practitioner" means:

(a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

(c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

(d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;

(e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;

(f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;

(g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;

(h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;

(j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

(k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act; and

(m) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act.

(50) (a) "Heavy beer" means a product that:

(i) contains more than 5% alcohol by volume; and

(ii) is obtained by fermentation, infusion, or decoction of:

(A) malt; or

(B) a malt substitute.

(b) "Heavy beer" is considered liquor for the purposes of this title.

(51) "Hospitality amenity license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 10, Hospitality Amenity License.

(52) (a) "Hotel" means a commercial lodging establishment that:

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- (i) offers at least 40 rooms as temporary sleeping accommodations for compensation;
 - (ii) is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract; and
 - (iii) (A) has adequate kitchen or culinary facilities on the premises to provide complete meals;
 - (B) has at least 1,000 square feet of function space consisting of meeting or dining rooms that can be reserved for a banquet and can accommodate at least 75 individuals; or
 - (C) if the establishment is located in a small or unincorporated locality, has an appropriate amount of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract, as determined by the commission.
- (b) "Hotel" includes a commercial lodging establishment that:
- (i) meets the requirements under Subsection (52)(a); and
 - (ii) has one or more privately owned dwelling units.
- (53) "Hotel license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8b, Hotel License Act.
- (54) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.
- (55) "Industry representative" means an individual who is compensated by salary, commission, or other means for representing and selling an alcoholic product of a manufacturer, supplier, or importer of liquor.
- (56) "Industry representative sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling by a local industry representative on the premises of the department to educate the local industry representative of the quality and characteristics of the product.
- (57) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing of an alcoholic product is prohibited by:
- (a) law; or
 - (b) court order.
- (58) "International airport" means an airport:
- (a) with a United States Customs and Border Protection office on the premises of the airport; and

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(b) at which international flights may enter and depart.

(59) "Intoxicated" means that a person:

(a) is significantly impaired as to the person's mental or physical functions as a result of the use of:

(i) an alcoholic product;

(ii) a controlled substance;

(iii) a substance having the property of releasing toxic vapors; or

(iv) a combination of Subsections (59)(a)(i) through (iii); and

(b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the overconsumption of an alcoholic product.

(60) "Investigator" means an individual who is:

(a) a department compliance officer; or

(b) a nondepartment enforcement officer.

(61) "License" means:

(a) a retail license;

(b) a sublicense;

(c) a license issued in accordance with Chapter 7, Part 4, Off-Premise Beer Retailer State License;

(d) a license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act;

(e) a license issued in accordance with Chapter 12, Liquor Warehousing License Act;

(f) a license issued in accordance with Chapter 13, Beer Wholesaling License Act; or

(g) a license issued in accordance with Chapter 17, Liquor Transport License Act.

(62) "Licensee" means a person who holds a license.

(63) "Limited-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-Service Restaurant License.

(64) "Limousine" means a motor vehicle licensed by the state or a local authority, other than a bus or taxicab:

(a) in which the driver and a passenger are separated by a partition, glass, or other barrier;

(b) that is provided by a business entity to one or more individuals at a fixed charge in

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accordance with the business entity's tariff; and

(c) to give the one or more individuals the exclusive use of the limousine and a driver to travel to one or more specified destinations.

(65) (a) (i) "Liquor" means a liquid that:

(A) is:

(I) alcohol;

(II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;

(III) a combination of liquids a part of which is spirituous, vinous, or fermented; or

(IV) other drink or drinkable liquid; and

(B) (I) contains at least .5% alcohol by volume; and

(II) is suitable to use for beverage purposes.

(ii) "Liquor" includes:

(A) heavy beer;

(B) wine; and

(C) a flavored malt beverage.

(b) "Liquor" does not include beer.

(66) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

(67) "Liquor transport license" means a license issued in accordance with Chapter 17, Liquor Transport License Act.

(68) "Liquor warehousing license" means a license that is issued:

(a) in accordance with Chapter 12, Liquor Warehousing License Act; and

(b) to a person, other than a licensed manufacturer, who engages in the importation for storage, sale, or distribution of liquor regardless of amount.

(69) "Local authority" means:

(a) for premises that are located in an unincorporated area of a county, the governing body of a county;

(b) for premises that are located in an incorporated city, town, or metro township, the governing body of the city, town, or metro township; or

(c) for premises that are located in a project area as defined in Section 63H-1-102 and in a project area plan adopted by the Military Installation Development Authority under Title 63H, Chapter 1, Military Installation Development Authority Act, the Military Installation

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Development Authority.

(70) "Lounge or bar area" is as defined by rule made by the commission.

(71) "Malt substitute" means:

- (a) rice;
- (b) grain;
- (c) bran;
- (d) glucose;
- (e) sugar; or
- (f) molasses.

(72) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

(73) "Member" means an individual who, after paying regular dues, has full privileges in an equity licensee or fraternal licensee.

(74) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:

- (i) (A) under the control of the United States Department of Defense; or
- (B) of the National Guard;
- (ii) that is located within the state; and
- (iii) including a leased facility.

(b) "Military installation" does not include a facility used primarily for:

- (i) civil works;
- (ii) a rivers and harbors project; or
- (iii) a flood control project.

(75) "Minibar" means an area of a hotel guest room where one or more alcoholic products are kept and offered for self-service sale or consumption.

(76) "Minor" means an individual under 21 years old.

(77) "Nondepartment enforcement agency" means an agency that:

- (a) (i) is a state agency other than the department; or
- (ii) is an agency of a county, city, town, or metro township; and
- (b) has a responsibility to enforce one or more provisions of this title.

(78) "Nondepartment enforcement officer" means an individual who is:

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- (a) a peace officer, examiner, or investigator; and
- (b) employed by a nondepartment enforcement agency.

(79) (a) "Off-premise beer retailer" means a beer retailer who is:

- (i) licensed in accordance with Chapter 7, Off-Premise Beer Retailer Act; and
- (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.

(b) "Off-premise beer retailer" does not include an on-premise beer retailer.

(80) "Off-premise beer retailer state license" means a state license issued in accordance with Chapter 7, Part 4, Off-Premise Beer Retailer State License.

(81) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-Premise Banquet License.

(82) "On-premise beer retailer" means a beer retailer who is:

(a) authorized to sell, offer for sale, or furnish beer under a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-Premise Beer Retailer License; and

(b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises:

(i) regardless of whether the beer retailer sells beer for consumption off the licensed premises; and

(ii) on and after March 1, 2012, operating:

(A) as a tavern; or

(B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

(83) "Opaque" means impenetrable to sight.

(84) "Package agency" means a retail liquor location operated:

(a) under an agreement with the department; and

(b) by a person:

(i) other than the state; and

(ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package Agency, to sell packaged liquor for consumption off the premises of the package agency.

(85) "Package agent" means a person who holds a package agency.

(86) "Patron" means an individual to whom food, beverages, or services are sold,

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offered for sale, or furnished, or who consumes an alcoholic product including:

- (a) a customer;
- (b) a member;
- (c) a guest;
- (d) an attendee of a banquet or event;
- (e) an individual who receives room service;
- (f) a resident of a resort; or
- (g) a hospitality guest, as defined in Section 32B-6-1002, under a hospitality amenity

license.

(87) (a) "Performing arts facility" means a multi-use performance space that:

(i) is primarily used to present various types of performing arts, including dance, music, and theater;

(ii) contains over 2,500 seats;

(iii) is owned and operated by a governmental entity; and

(iv) is located in a city of the first class.

(b) "Performing arts facility" does not include a space that is used to present sporting events or sporting competitions.

(88) "Permittee" means a person issued a permit under:

(a) Chapter 9, Event Permit Act; or

(b) Chapter 10, Special Use Permit Act.

(89) "Person subject to administrative action" means:

(a) a licensee;

(b) a permittee;

(c) a manufacturer;

(d) a supplier;

(e) an importer;

(f) one of the following holding a certificate of approval:

(i) an out-of-state brewer;

(ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or

(iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or

(g) staff of:

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(i) a person listed in Subsections (89)(a) through (f); or

(ii) a package agent.

(90) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined in this title or rules made by the commission.

(91) "Prescription" means an order issued by a health care practitioner when:

(a) the health care practitioner is licensed under Title 58, Occupations and Professions, to prescribe a controlled substance, other drug, or device for medicinal purposes;

(b) the order is made in the course of that health care practitioner's professional practice; and

(c) the order is made for obtaining an alcoholic product for medicinal purposes only.

(92) (a) "Primary spirituous liquor" means the main distilled spirit in a beverage.

(b) "Primary spirituous liquor" does not include a secondary flavoring ingredient.

(93) "Principal license" means:

(a) a resort license;

(b) a hotel license; or

(c) an arena license.

(94) (a) "Private event" means a specific social, business, or recreational event:

(i) for which an entire room, area, or hall is leased or rented in advance by an identified group; and

(ii) that is limited in attendance to people who are specifically designated and their guests.

(b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.

(95) "Privately sponsored event" means a specific social, business, or recreational event:

(a) that is held in or on the premises of an on-premise banquet licensee; and

(b) to which entry is restricted by an admission fee.

(96) (a) "Proof of age" means:

(i) an identification card;

(ii) an identification that:

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- (A) is substantially similar to an identification card;
- (B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;
- (C) includes date of birth; and
- (D) has a picture affixed;
- (iii) a valid driver license certificate that:
 - (A) includes date of birth;
 - (B) has a picture affixed; and
 - (C) is issued:
 - (I) under Title 53, Chapter 3, Uniform Driver License Act;
 - (II) in accordance with the laws of the state in which it is issued; or
 - (III) in accordance with federal law by the United States Department of State;
 - (iv) a military identification card that:
 - (A) includes date of birth; and
 - (B) has a picture affixed; or
 - (v) a valid passport.
- (b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.
- (97) "Provisions applicable to a sublicense" means:
 - (a) for a full-service restaurant sublicense, the provisions applicable to a full-service restaurant license under Chapter 6, Part 2, Full-Service Restaurant License;
 - (b) for a limited-service restaurant sublicense, the provisions applicable to a limited-service restaurant license under Chapter 6, Part 3, Limited-Service Restaurant License;
 - (c) for a bar establishment sublicense, the provisions applicable to a bar establishment license under Chapter 6, Part 4, Bar Establishment License;
 - (d) for an on-premise banquet sublicense, the provisions applicable to an on-premise banquet license under Chapter 6, Part 6, On-Premise Banquet License;
 - (e) for an on-premise beer retailer sublicense, the provisions applicable to an on-premise beer retailer license under Chapter 6, Part 7, On-Premise Beer Retailer License;
 - (f) for a beer-only restaurant sublicense, the provisions applicable to a beer-only restaurant license under Chapter 6, Part 9, Beer-Only Restaurant License;

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(g) for a hospitality amenity license, the provisions applicable to a hospitality amenity license under Chapter 6, Part 10, Hospitality Amenity License; and

(h) for a spa sublicense, the provisions applicable to the sublicense under Chapter 8d, Part 2, Spa Sublicense.

(98) (a) "Public building" means a building or permanent structure that is:

(i) owned or leased by:

(A) the state; or

(B) a local government entity; and

(ii) used for:

(A) public education;

(B) transacting public business; or

(C) regularly conducting government activities.

(b) "Public building" does not include a building owned by the state or a local government entity when the building is used by a person, in whole or in part, for a proprietary function.

(99) "Public conveyance" means a conveyance that the public or a portion of the public has access to and a right to use for transportation, including an airline, railroad, bus, boat, or other public conveyance.

(100) "Reception center" means a business that:

(a) operates facilities that are at least 5,000 square feet; and

(b) has as its primary purpose the leasing of the facilities described in Subsection (100)(a) to a third party for the third party's event.

(101) "Reception center license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 8, Reception Center License.

(102) (a) "Record" means information that is:

(i) inscribed on a tangible medium; or

(ii) stored in an electronic or other medium and is retrievable in a perceivable form.

(b) "Record" includes:

(i) a book;

(ii) a book of account;

(iii) a paper;

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- (iv) a contract;
- (v) an agreement;
- (vi) a document; or
- (vii) a recording in any medium.

(103) "Residence" means a person's principal place of abode within Utah.

(104) "Resident," in relation to a resort, means the same as that term is defined in Section 32B-8-102.

(105) "Resort" means the same as that term is defined in Section 32B-8-102.

(106) "Resort facility" is as defined by the commission by rule.

(107) "Resort license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8, Resort License Act.

(108) "Responsible alcohol service plan" means a written set of policies and procedures that outlines measures to prevent employees from:

- (a) over-serving alcoholic beverages to customers;
- (b) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and
- (c) serving alcoholic beverages to minors.

(109) "Restaurant" means a business location:

- (a) at which a variety of foods are prepared;
- (b) at which complete meals are served; and
- (c) that is engaged primarily in serving meals.

(110) "Restaurant license" means one of the following licenses issued under this title:

- (a) a full-service restaurant license;
- (b) a limited-service restaurant license; or
- (c) a beer-only restaurant license.

(111) "Retail license" means one of the following licenses issued under this title:

- (a) a full-service restaurant license;
- (b) a master full-service restaurant license;
- (c) a limited-service restaurant license;
- (d) a master limited-service restaurant license;
- (e) a bar establishment license;

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- (f) an airport lounge license;
- (g) an on-premise banquet license;
- (h) an on-premise beer license;
- (i) a reception center license;
- (j) a beer-only restaurant license;
- (k) a hospitality amenity license;
- (l) a resort license;
- (m) a hotel license; or
- (n) an arena license.

(112) "Room service" means furnishing an alcoholic product to a person in a guest room or privately owned dwelling unit of a:

- (a) hotel; or
- (b) resort facility.

(113) (a) "School" means a building in which any part is used for more than three hours each weekday during a school year as a public or private:

- (i) elementary school;
- (ii) secondary school; or
- (iii) kindergarten.
- (b) "School" does not include:
 - (i) a nursery school;
 - (ii) a day care center;
 - (iii) a trade and technical school;

~~[(iv)]~~ (iv) a micro-education entity as defined in Section 53G-6-201;

(v) a home-based education entity as defined in Section 53G-6-201;

~~[(iv)]~~ (vi) a preschool; or

~~[(v)]~~ (vii) a home school.

(114) "Secondary flavoring ingredient" means any spirituous liquor added to a beverage for additional flavoring that is different in type, flavor, or brand from the primary spirituous liquor in the beverage.

(115) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered,

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delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.

(116) "Serve" means to place an alcoholic product before an individual.

(117) "Sexually oriented entertainer" means a person who while in a state of seminudity appears at or performs:

- (a) for the entertainment of one or more patrons;
- (b) on the premises of:
 - (i) a bar licensee; or
 - (ii) a tavern;
- (c) on behalf of or at the request of the licensee described in Subsection (117)(b);
- (d) on a contractual or voluntary basis; and
- (e) whether or not the person is designated as:
 - (i) an employee;
 - (ii) an independent contractor;
 - (iii) an agent of the licensee; or
 - (iv) a different type of classification.

(118) "Shared seating area" means the licensed premises of two or more restaurant licensees that the restaurant licensees share as an area for alcoholic beverage consumption in accordance with Subsection 32B-5-207(3).

(119) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.

(120) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt beverage per year, as the department calculates by:

(a) if the brewer is part of a controlled group of manufacturers, including the combined volume totals of production for all breweries that constitute the controlled group of manufacturers; and

(b) excluding beer, heavy beer, or flavored malt beverage the brewer:

(i) manufactures that is unfit for consumption as, or in, a beverage, as the commission determines by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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(ii) does not sell for consumption as, or in, a beverage.

(121) "Small or unincorporated locality" means:

(a) a city of the third, fourth, or fifth class, as classified under Section 10-2-301;

(b) a town, as classified under Section 10-2-301; or

(c) an unincorporated area in a county of the third, fourth, or fifth class, as classified under Section 17-50-501.

(122) "Spa sublicense" means a sublicense:

(a) to a resort license or hotel license; and

(b) that the commission issues in accordance with Chapter 8d, Part 2, Spa Sublicense.

(123) "Special use permit" means a permit issued in accordance with Chapter 10, Special Use Permit Act.

(124) (a) "Spirituous liquor" means liquor that is distilled.

(b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

(125) "Sports center" is as defined by the commission by rule.

(126) (a) "Staff" means an individual who engages in activity governed by this title:

(i) on behalf of a business, including a package agent, licensee, permittee, or certificate holder;

(ii) at the request of the business, including a package agent, licensee, permittee, or certificate holder; or

(iii) under the authority of the business, including a package agent, licensee, permittee, or certificate holder.

(b) "Staff" includes:

(i) an officer;

(ii) a director;

(iii) an employee;

(iv) personnel management;

(v) an agent of the licensee, including a managing agent;

(vi) an operator; or

(vii) a representative.

(127) "State of nudity" means:

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- (a) the appearance of:
 - (i) the nipple or areola of a female human breast;
 - (ii) a human genital;
 - (iii) a human pubic area; or
 - (iv) a human anus; or
- (b) a state of dress that fails to opaquely cover:
 - (i) the nipple or areola of a female human breast;
 - (ii) a human genital;
 - (iii) a human pubic area; or
 - (iv) a human anus.

(128) "State of seminudity" means a state of dress in which opaque clothing covers no more than:

- (a) the nipple and areola of the female human breast in a shape and color other than the natural shape and color of the nipple and areola; and
- (b) the human genitals, pubic area, and anus:
 - (i) with no less than the following at its widest point:
 - (A) four inches coverage width in the front of the human body; and
 - (B) five inches coverage width in the back of the human body; and
 - (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

(129) (a) "State store" means a facility for the sale of packaged liquor:

- (i) located on premises owned or leased by the state; and
 - (ii) operated by a state employee.
- (b) "State store" does not include:
- (i) a package agency;
 - (ii) a licensee; or
 - (iii) a permittee.

(130) (a) "Storage area" means an area on licensed premises where the licensee stores an alcoholic product.

(b) "Store" means to place or maintain in a location an alcoholic product.

(131) "Sublicense" means:

- (a) any of the following licenses issued as a subordinate license to, and contingent on

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the issuance of, a principal license:

- (i) a full-service restaurant license;
 - (ii) a limited-service restaurant license;
 - (iii) a bar establishment license;
 - (iv) an on-premise banquet license;
 - (v) an on-premise beer retailer license;
 - (vi) a beer-only restaurant license; or
 - (vii) a hospitality amenity license; or
- (b) a spa sublicense.

(132) "Supplier" means a person who sells an alcoholic product to the department.

(133) "Tavern" means an on-premise beer retailer who is:

(a) issued a license by the commission in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-Premise Beer Retailer License; and

(b) designated by the commission as a tavern in accordance with Chapter 6, Part 7, On-Premise Beer Retailer License.

(134) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.

(135) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

(136) "Translucent" means a substance that allows light to pass through, but does not allow an object or person to be seen through the substance.

(137) "Unsaleable liquor merchandise" means a container that:

(a) is unsaleable because the container is:

- (i) unlabeled;
- (ii) leaky;
- (iii) damaged;
- (iv) difficult to open; or
- (v) partly filled;

(b) (i) has faded labels or defective caps or corks;

(ii) has contents that are:

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- (A) cloudy;
- (B) spoiled; or
- (C) chemically determined to be impure; or
- (iii) contains:
 - (A) sediment; or
 - (B) a foreign substance; or
- (c) is otherwise considered by the department as unfit for sale.

(138) (a) "Wine" means an alcoholic product obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not another ingredient is added.

(b) "Wine" includes:

(i) an alcoholic beverage defined as wine under 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 4.10; and

(ii) hard cider.

(c) "Wine" is considered liquor for purposes of this title, except as otherwise provided in this title.

(139) "Winery manufacturing license" means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

Section ~~(2)~~7. Section **53G-6-201** is amended to read:

53G-6-201. Definitions.

As used in this part:

(1) (a) "Absence" or "absent" means the failure of a school-age child assigned to a class or class period to attend a class or class period.

(b) "Absence" or "absent" does not mean multiple tardies used to calculate an absence for the sake of a truancy.

(2) "Education cooperative" means two or more families jointly providing education services to school-aged children.

~~(2)~~ (3) "Educational neglect" means the same as that term is defined in Section 80-1-102.

(4) "Extracurricular lessons" means the provision of educational services or experiences beyond traditional academic instruction.

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(5) (a) "Home-based education entity" means ~~fa person~~an individual or association of ~~persons~~individuals that, for compensation, provides kindergarten through grade 12 education services to ~~25~~16 or fewer students from ~~their primary~~an individual's residential dwelling, accessory dwelling unit, or residential property.

(b) "Home-based education entity" includes:

(i) a tutoring service;

(ii) an education cooperative; and

(iii) an entity that provides extracurricular lessons.

(c) "Home-based education entity" does not include:

(i) a daycare; or

(ii) a family that has filed an affidavit for a child pursuant to ~~under~~ Section 53G-6-204.

(6) "Instructor" means an individual who teaches a student as part of a home-based education entity or micro-education entity.

~~(6)~~(7) (a) "Micro-education entity" means a person or association of persons that, for compensation, provides kindergarten through grade 12 education services to ~~150~~100 students or fewer.

(b) "Micro-education entity" does not include:

(i) a daycare;

~~(ii)~~(ii) a family that has filed an affidavit for a child pursuant to Section 53G-6-204;~~;~~
or

~~(iii)~~(iii) a home-based education entity;

(iv) a private school; or

(v) a school within the public education system.

~~(3)~~ ~~(7)~~(8) "Minor" means an individual who is under 18 years old.

~~(4)~~ ~~(8)~~(9) "Parent" includes:

(a) a custodial parent of the minor;

(b) a legally appointed guardian of a minor; or

(c) any other person purporting to exercise any authority over the minor which could be exercised by a person described in Subsection ~~(4)~~ ~~(8)~~(9)(a) or (b).

~~(5)~~ ~~(9)~~(10) "School day" means the portion of a day that school is in session in which

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a school-age child is required to be in school for purposes of receiving instruction.

~~[(6)]~~ ~~(~~10~~; ~~11~~)~~ "School year" means the period of time designated by a local school board or charter school governing board as the school year for the school where the school-age child:

- (a) is enrolled; or
- (b) should be enrolled, if the school-age child is not enrolled in school.

~~[(7)]~~ ~~(~~11~~; ~~12~~)~~ "School-age child" means a minor who:

- (a) is at least six years old but younger than 18 years old; and
- (b) is not emancipated.

~~[(8)]~~ ~~(~~12~~; ~~13~~)~~ (a) "Truant" means a condition in which a school-age child, without a valid excuse, and subject to Subsection ~~[(8)]~~ ~~(~~12~~; ~~13~~)~~(b), is absent for at least:

- (i) half of the school day; or
- (ii) if the school-age child is enrolled in a learner verified program, as that term is defined by the state board, the relevant amount of time under the LEA's policy regarding the LEA's continuing enrollment measure as it relates to truancy.

(b) A school-age child may not be considered truant under this part more than one time during one day.

~~[(9)]~~ ~~(~~13~~; ~~14~~)~~ "Truant minor" means a school-age child who:

- (a) is subject to the requirements of Section 53G-6-202 or 53G-6-203; and
- (b) is truant.

~~[(10)]~~ ~~(~~14~~; ~~15~~)~~ (a) "Valid excuse" means:

- (i) an illness, which may be either mental or physical, regardless of whether the school-age child or parent provides documentation from a medical professional;
- (ii) mental or behavioral health of the school-age child;
- (iii) a family death;
- (iv) an approved school activity;
- (v) an absence permitted by a school-age child's:
 - (A) individualized education program; or
 - (B) Section 504 accommodation plan;
- (vi) an absence permitted in accordance with Subsection 53G-6-803(5); or
- (vii) any other excuse established as valid by a local school board, charter school

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governing board, or school district.

(b) "Valid excuse" does not mean a parent acknowledgment of an absence for a reason other than a reason described in Subsections ~~[(10)(a)(i)]~~ (15)(a)(i) through (vi), unless specifically permitted by the local school board, charter school governing board, or school district under Subsection ~~[(10)(a)(vi)]~~ (15)(a)(vi).

Section ~~{3}8~~. Section ~~{53G-6-202}~~ 53G-6-204 is amended to read:

~~{~~ 53G-6-202. Compulsory education:

~~_____~~ (1) As used in this section:

~~_____~~ (a) "Intentionally" means the same as that term is defined in Section 76-2-103.

~~_____~~ (b) "Notice of compulsory education violation" means a notice issued in accordance with Subsections ~~(3) and (4)~~:

~~_____~~ (c) "Remainder of the school year" means the portion of the school year beginning on the day after the day on which a notice of compulsory education violation is served and ending on the last day of the school year.

~~_____~~ (2) Except as provided in Section 53G-6-204, 53G-6-212, or 53G-6-702, the parent of a school-age child shall enroll and send the school-age child to a public or regularly established private school.

~~_____~~ (3) A school administrator, a designee of a school administrator, a law enforcement officer acting as a school resource officer, or a truancy specialist may only issue a notice of compulsory education violation to a parent of a school-age child if the school-age child is:

~~_____~~ (a) in grade 1 through 6; and

~~_____~~ (b) truant at least five times during the school year.

~~_____~~ (4) A notice of compulsory education violation issued to a parent:

~~_____~~ (a) shall direct the parent to:

~~_____~~ (i) meet with school authorities to discuss the school-age child's school attendance problems; and

~~_____~~ (ii) cooperate with the local school board, charter school governing board, or school district in securing regular attendance by the school-age child;

~~_____~~ (b) shall designate the school authorities with whom the parent is required to meet;

~~_____~~ (c) shall state that it is a class B misdemeanor for the parent to intentionally or without good cause:

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~~—— (i) fail to meet with the designated school authorities to discuss the school-age child's school attendance problems; or~~

~~—— (ii) fail to prevent the school-age child from being truant five or more times during the remainder of the school year;~~

~~—— (d) shall be served on the parent by personal service or certified mail; and~~

~~—— (e) may not be issued unless the school-age child has been truant at least five times during the school year.~~

~~—— (5) Except during the period between March 17, 2021, and June 1, 2022, it is a class B misdemeanor for a parent of a school-age child to intentionally or without good cause fail to enroll the school-age child in school, unless the school-age child is exempt from enrollment under Section 53G-6-204, 53G-6-212, or 53G-6-702.~~

~~—— (6) Except during the period between March 17, 2021, and June 1, 2022, it is a class B misdemeanor for a parent of a school-age child who is in grade 1 through 6 to, after being served with a notice of compulsory education violation, intentionally or without good cause:~~

~~—— (a) fail to meet with the school authorities designated in the notice of compulsory education violation to discuss the school-age child's school attendance problems; or~~

~~—— (b) fail to prevent the school-age child from being truant five or more times during the remainder of the school year.~~

~~—— (7) Except during the period described in Subsections (5) and (6), a local school board, charter school governing board, or school district shall report violations of this section to the appropriate county or district attorney.~~

~~—— (8) Except during the period described in Subsections (5) and (6), if school personnel have reason to believe that, after a notice of compulsory education violation is issued, the parent has failed to make a good faith effort to ensure that the school-age child receives an appropriate education, the issuer of the compulsory education violation shall report to the Division of Child and Family Services:~~

~~—— (a) identifying information of the school-age child and the parent who received the notice of compulsory education violation;~~

~~—— (b) information regarding the longest number of consecutive school days the school-age child has been absent or truant from school and the percentage of school days the school-age child has been absent or truant during each relevant school term;~~

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~~—— (c) whether the school-age child has made adequate educational progress;~~

~~—— (d) whether the requirements of Section 53G-6-206 have been met;~~

~~—— (e) whether the school-age child is two or more years behind the local public school's age group expectations in one or more basic skills; and~~

~~—— (f) whether the school-age child is receiving special education services or systematic remediation efforts;~~

~~—— (9) Notwithstanding this section, during the period described in Subsections (5) and (6), a school administrator, designee of a school administrator, law enforcement officer acting as a school resource officer, or truancy specialist may not issue or otherwise enforce a notice of compulsory education:~~

~~—— Section 4. Section 53G-6-203 is amended to read:~~

~~—— 53G-6-203. **Truancy -- Notice of truancy -- Failure to cooperate with school authorities.**~~

~~—— (1) Except as provided in Section 53G-6-204, 53G-6-212 or 53G-6-702, a school-age child who is enrolled in a public school shall attend the public school in which the school-age child is enrolled.~~

~~—— (2) Except during the period between the effective date of this bill and June 1, 2022, accordance with Section 53G-8-211, a local school board, charter school governing board, or school district may impose administrative penalties on a school-age child who is:~~

~~—— (a) in grade 7 or above, unless the school-age child is less than 12 years old; and~~

~~—— (b) truant.~~

~~—— (3) A local school board or charter school governing board:~~

~~—— (a) may authorize a school administrator, a designee of a school administrator, a law enforcement officer acting as a school resource officer, or a truancy specialist to issue a notice of truancy in accordance with Subsection (4); and~~

~~—— (b) shall establish a procedure for a school-age child, or the school-age child's parents, to contest a notice of truancy.~~

~~—— (4) A notice of truancy described in Subsection (3):~~

~~—— (a) may not be issued until a school-age child has been truant at least five times during the school year;~~

~~—— (b) may not be issued to a school-age child who is less than 12 years old or in a grade~~

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~~below grade 7;~~

~~—— (c) may not be issued to a school-age child exempt from school attendance as provided in Section 53G-6-204, 53G-6-212, or 53G-6-702;~~

~~—— (d) shall direct the school-age child who receives the notice of truancy and the parent of the school-age child to:~~

~~—— (i) meet with school authorities to discuss the school-age child's trancies; and~~

~~—— (ii) cooperate with the local school board, charter school governing board, or school district in securing regular attendance by the school-age child; and~~

~~—— (e) shall be mailed to, or served on, the school-age child's parent.~~

~~—— (5) (a) Except as provided in Subsection (5)(b), nothing in this part prohibits a local school board, charter school governing board, or school district from taking action to resolve a truancy problem with a school-age child who has been truant fewer than five times, provided that the action does not conflict with the requirements of this part.~~

~~—— (b) A local school board, charter school governing board, or school district may not take punitive action to resolve a truancy problem with a school-age child during the period described in Subsection (2).~~

~~—— (6) Notwithstanding this section, during the period described in Subsection (2), a school administrator, designee of a school administrator, law enforcement officer acting as a school resource officer, or truancy specialist may not issue or otherwise enforce a notice of truancy.~~

‡ **53G-6-204. School-age children exempt from school attendance.**

(1) (a) A local school board or charter school governing board may excuse a school-age child from attendance for any of the following reasons:

(i) a school-age child over ~~[age]~~ 16 years old may receive a partial release from school to enter employment, or attend a trade school, if the school-age child has completed grade 8; or

(ii) on an annual basis, a school-age child may receive a full release from attending a public, regularly established private, or part-time school or class if:

(A) the school-age child has already completed the work required for graduation from high school;

(B) the school-age child is in a physical or mental condition, certified by a competent physician if required by the local school board or charter school governing board, which

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renders attendance inexpedient and impracticable;

(C) proper influences and adequate opportunities for education are provided in connection with the school-age child's employment; or

(D) the district superintendent or charter school governing board has determined that a school-age child over the age of 16 is unable to profit from attendance at school because of inability or a continuing negative attitude toward school regulations and discipline.

(b) A school-age child receiving a partial release from school under Subsection (1)(a)(i) is required to attend:

(i) school part time as prescribed by the local school board or charter school governing board; or

(ii) a home school part time.

(c) In each case, evidence of reasons for granting an exemption under this Subsection (1) must be sufficient to satisfy the local school board or charter school governing board.

(d) A local school board or charter school governing board that excuses a school-age child from attendance as provided by this Subsection (1) shall issue a certificate that the child is excused from attendance during the time specified on the certificate.

(2) (a) A local school board shall excuse a school-age child from attendance, if the school-age child's parent files a signed and notarized affidavit with the school-age child's school district of residence, as defined in Section 53G-6-302, that:

(i) the school-age child will attend a home school, micro-education entity, or home-based education entity; and

(ii) the parent assumes sole responsibility for the education of the school-age child, except to the extent the school-age child is dual enrolled in a public school as provided in Section 53G-6-702.

(b) A signed and notarized affidavit filed in accordance with Subsection (2)(a) shall remain in effect as long as:

(i) the school-age child attends a home school, micro-education entity, or home-based education entity; and

(ii) the school district where the affidavit was filed remains the school-age child's district of residence.

(c) A parent or instructor of a school-age child who attends a home school,

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micro-education entity, or home-based education entity is solely responsible for:

- (i) the selection of instructional materials and textbooks;
- (ii) the time, place, and method of instruction; and
- (iii) the evaluation of the home school instruction.
- (d) A local school board may not:
 - (i) require a parent of a school-age child who attends a home school, micro-education entity, or home-based education entity to maintain records of instruction or attendance;
 - (ii) require credentials for individuals providing home school, micro-education entity, or home-based education entity instruction;
 - (iii) inspect home school, micro-education entity, or home-based education entity facilities, except as provided in Section 53G-6-212; or
 - (iv) require standardized or other testing of home school, micro-education entity, or home-based education entity students.
- (e) Upon the request of a parent, a local school board shall identify the knowledge, skills, and competencies a student is recommended to attain by grade level and subject area to assist the parent or instructor in achieving college and career readiness through [home schooling] schooling at a home school, micro-education entity, or home-based education entity.
- (f) A local school board that excuses a school-age child from attendance as provided by this Subsection (2) shall annually issue a certificate stating that the school-age child is excused from attendance for the specified school year.
- (g) A local school board shall issue a certificate excusing a school-age child from attendance:
 - (i) within 30 days after receipt of a signed and notarized affidavit filed by the school-age child's parent pursuant to this Subsection (2); and
 - (ii) on or before August 1 each year thereafter unless:
 - (A) the school-age child enrolls in a school within the school district;
 - (B) the school-age child's parent notifies the school district that the school-age child no longer attends a home school; or
 - (C) the school-age child's parent notifies the school district that the school-age child's school district of residence has changed.
- (3) A parent who files a signed and notarized affidavit as provided in Subsection (2)(a)

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is exempt from the application of Subsections 53G-6-202(2), (5), and (6).

(4) (a) Nothing in this section may be construed to prohibit or discourage voluntary cooperation, resource sharing, or testing opportunities between a school or school district and a parent of a child attending a home school.

(b) The exemptions in this section apply regardless of whether:

(i) a parent provides education instruction to the parent's child alone or in cooperation with other parents similarly exempted under this section; or

(ii) the parent makes payment for educational services the parent's child receives.

Section ~~{5}9~~. Section ~~{53G-6-206}~~ 53G-6-212 is ~~{amended to read:~~

~~———— 53G-6-206. Duties of a local school board, charter school governing board, or school district in resolving attendance problems -- Parental involvement -- Liability not imposed -- Report to state board.~~

~~———— (1) (a) Subject to Subsection (1)(b), a local school board, charter school governing board, or school district shall make efforts to resolve the school attendance problems of each school-age child who is, or should be, enrolled in the school district.~~

~~———— (b) A school-age child exempt from school attendance under Section 53G-6-204, 53G-6-212, or 53G-6-702 is not considered to be a school-age child who is or should be enrolled in a school district or charter school under Subsection (1)(a).~~

~~———— (2) The efforts described in Subsection (1) shall include, as reasonably feasible:~~

~~———— (a) counseling of the school-age child by school authorities;~~

~~———— (b) (i) issuing a notice of truancy to the school-age child in accordance with Section 53G-6-203; or~~

~~———— (ii) issuing a notice of compulsory education violation to the school-age child's parent in accordance with Section 53G-6-202;~~

~~———— (c) making any necessary adjustment to the curriculum and schedule to meet special needs of the school-age child;~~

~~———— (d) considering alternatives proposed by the school-age child's parent;~~

~~———— (e) monitoring school attendance of the school-age child;~~

~~———— (f) voluntary participation in truancy mediation, if available; and~~

~~———— (g) providing the school-age child's parent, upon request, with a list of resources available to assist the parent in resolving the school-age child's attendance problems.~~

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~~— (3) In addition to the efforts described in Subsection (2), the local school board, charter school governing board, or school district may enlist the assistance of community and law enforcement agencies as appropriate and reasonably feasible in accordance with Section 53G-8-211.~~

~~— (4) This section does not impose civil liability on boards of education, local school boards, charter school governing boards, school districts, or their employees.~~

~~— (5) Proceedings initiated under this part do not obligate or preclude action by the Division of Child and Family Services under Section 53G-6-210.~~

~~— (6) Each LEA shall annually report the following data separately to the state board:~~

~~— (a) absences with a valid excuse; and~~

~~— (b) absences without a valid excuse.~~

~~— Section 6. Section 53G-6-212 is enacted to read:~~

~~}; enacted to read:~~

53G-6-212. Micro-education entity and home-based education entity waivers and exemptions.

(1) A home-based education entity or a micro-education entity:

(a) may form to provide education services to school-aged children};

~~— (2) A micro-education entity or home-based education entity is solely responsible for the following criteria with regard to the entity's students:~~

~~— (a) the selection of instructional materials and textbooks;~~

~~— (b) the time, place, and method of instruction; and~~

~~— (c) the evaluation of the instruction.~~

~~— (3); and~~

(b) is not an LEA, a public school, or otherwise a part of the public education system.

(2) A local health department may not require a micro-education entity or a home-based education entity to obtain a food establishment permit or undergo an inspection in order to prepare or provide food};

~~— (4) A parent}; if staff of {a student attending a} the micro-education entity or home-based education entity {is exempt from requirements described in Title 53G, Chapter 6, Part 2, Compulsory Education.~~

~~— (5) The State Office of Education or any other state entity may not require a~~

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~~micro-education entity or a home-based education entity to:~~

- ~~— (a) conduct a student assessment;~~
 - ~~— (b) maintain records of instruction or attendance; and~~
 - ~~— (c) require teaching or other credentials for individuals providing instruction at a micro-education entity or a home-based education entity.~~
- ~~Section 7}do not prepare and serve food.~~

Section 10. Section **53G-6-702** is amended to read:

53G-6-702. Dual enrollment.

(1) As used in this section, "minor" means the same as that term is defined in Section 53G-6-201.

(2) A person having control of a minor who is enrolled in a regularly established private school, micro-education entity, home-based education entity, or a home school may also enroll the minor in a public school for dual enrollment purposes.

(3) The minor may participate in any academic activity in the public school available to students in the minor's grade or age group, subject to compliance with the same rules and requirements that apply to a full-time student's participation in the activity.

(4) (a) A student enrolled in a dual enrollment program in a district school is considered a student of the district in which the district school of attendance is located for purposes of state funding to the extent of the student's participation in the district school programs.

(b) A student enrolled in a dual enrollment program in a charter school is considered a student of the charter school for purposes of state funding to the extent of the student's participation in the charter school programs.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state board shall make rules for purposes of dual enrollment to govern and regulate the transferability of credits toward graduation that are earned in a private school, micro-education entity, home-based education entity, or home school.

Section ~~{8}~~11. Section **53G-6-703** is amended to read:

53G-6-703. Private school, micro-education entity, home-based education entity, and home school students' participation in extracurricular activities in a public school.

(1) As used in this section:

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(a) "Academic eligibility requirements" means the academic eligibility requirements that a home school student is required to meet to participate in an extracurricular activity in a public school.

(b) "Minor" means the same as that term is defined in Section 53G-6-201.

(c) "Parent" means the same as that term is defined in Section 53G-6-201.

(d) "Principal" means the principal of the school in which a home school student participates or intends to participate in an extracurricular activity.

(2) (a) A minor who is enrolled in a private school, micro-education entity, home-based education entity, or a home school shall be eligible to participate in an extracurricular activity at a public school as provided in this section.

(b) A private school or micro-education entity student may only participate in an extracurricular activity at a public school that is not offered by the student's private school or micro-education entity.

(c) Except as provided in Subsection (2)(d), [~~a private school student or a home school student may only participate in an extracurricular activity at:~~] a student of a private school, micro-education entity, home-based education entity, or home school may only participate in an extracurricular activity at:

(i) the school within whose attendance boundaries the student's custodial parent resides; or

(ii) the school from which the student withdrew for the purpose of attending a private school, micro-education entity, home-based education entity, or home school.

(d) A school other than a school described in Subsection (2)(c)(i) or (ii) may allow [~~a private school student or a home school student~~] a student of a private school, micro-education entity, or home school to participate in an extracurricular activity other than:

(i) an interscholastic competition of athletic teams sponsored and supported by a public school; or

(ii) an interscholastic contest or competition for music, drama, or forensic groups or teams sponsored and supported by a public school.

(3) (a) Except as provided in Subsections (4) through (13), a private school or home school student shall be eligible to participate in an extracurricular activity at a public school consistent with eligibility standards:

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- (i) applied to a fully enrolled public school student;
- (ii) of the public school where the private school or home school student participates in an extracurricular activity; and
- (iii) for the extracurricular activity in which the private school or home school student participates.

(b) A school district or public school may not impose additional requirements on a private school or home school student to participate in an extracurricular activity that are not imposed on a fully enrolled public school student.

(c) (i) A private school or home school student who participates in an extracurricular activity at a public school shall pay the same fees as required of a fully enrolled public school student to participate in an extracurricular activity.

(ii) If a local school board or charter school governing board imposes a mandatory student activity fee for a student enrolled in a public school, the fee may be imposed on a private school or home school student who participates in an extracurricular activity at the public school if the same benefits of paying the mandatory student activity fee that are available to a fully enrolled public school student are available to a private school or home school student who participates in an extracurricular activity at the public school.

(4) Eligibility requirements based on school attendance are not applicable to a home school student.

(5) A home school student meets academic eligibility requirements to participate in an extracurricular activity if:

- (a) the student is mastering the material in each course or subject being taught; and
- (b) the student is maintaining satisfactory progress towards achievement or promotion.

(6) (a) To establish a home school student's academic eligibility, a parent, teacher, or organization providing instruction to the student shall submit an affidavit to the principal indicating the student meets academic eligibility requirements.

(b) Upon submission of an affidavit pursuant to Subsection (6)(a), a home school student shall:

- (i) be considered to meet academic eligibility requirements; and
- (ii) retain academic eligibility for all extracurricular activities during the activity season for which the affidavit is submitted, until:

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(A) a panel established under Subsection (10) determines the home school student does not meet academic eligibility requirements; or

(B) the person who submitted the affidavit under Subsection (6)(a) provides written notice to the school principal that the student no longer meets academic eligibility requirements.

(7) (a) A home school student who loses academic eligibility pursuant to Subsection (6)(b)(ii)(B) may not participate in an extracurricular activity until the person who submitted the affidavit under Subsection (6)(a) provides written notice to the school principal that the home school student has reestablished academic eligibility.

(b) If a home school student reestablishes academic eligibility pursuant to Subsection (7)(a), the home school student may participate in extracurricular activities for the remainder of the activity season for which an affidavit was submitted under Subsection (6)(a).

(8) A person who has probable cause to believe a home school student does not meet academic eligibility requirements may submit an affidavit to the principal:

(a) asserting the home school student does not meet academic eligibility requirements; and

(b) providing information indicating that the home school student does not meet the academic eligibility requirements.

(9) A principal shall review the affidavit submitted under Subsection (8), and if the principal determines it contains information which constitutes probable cause to believe a home school student may not meet academic eligibility requirements, the principal shall request a panel established pursuant to Subsection (10) to verify the student's compliance with academic eligibility requirements.

(10) (a) A school district superintendent shall:

(i) appoint a panel of three individuals to verify a home school student's compliance with academic eligibility requirements when requested by a principal pursuant to Subsection (9); and

(ii) select the panel members from nominees submitted by national, state, or regional organizations whose members are home school students and parents.

(b) Of the members appointed to a panel under Subsection (10)(a):

(i) one member shall have experience teaching in a public school as a licensed teacher

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and in home schooling high school-age students;

(ii) one member shall have experience teaching in a higher education institution and in home schooling; and

(iii) one member shall have experience in home schooling high school-age students.

(11) A panel appointed under Subsection (10):

(a) shall review the affidavit submitted under Subsection (8);

(b) may confer with the person who submitted the affidavit under Subsection (8);

(c) shall request the home school student to submit test scores or a portfolio of work documenting the student's academic achievement to the panel;

(d) shall review the test scores or portfolio of work; and

(e) shall determine whether the home school student meets academic eligibility requirements.

(12) A home school student who meets academic eligibility requirements pursuant to Subsection (11), retains academic eligibility for all extracurricular activities during the activity season for which an affidavit is submitted pursuant to Subsection (6).

(13) (a) A panel's determination that a home school student does not comply with academic eligibility requirements is effective for an activity season and all extracurricular activities that have academic eligibility requirements.

(b) A home school student who is not in compliance with academic eligibility requirements as determined by a panel appointed under Subsection (11) may seek to establish academic eligibility under this section for the next activity season.

(14) (a) A public school student who has been declared to be academically ineligible to participate in an extracurricular activity and who subsequently enrolls in a home school shall lose eligibility for participation in the extracurricular activity until the student:

(i) demonstrates academic eligibility by providing test results or a portfolio of the student's work to the school principal, provided that a student may not reestablish academic eligibility under this Subsection (14)(a) during the same activity season in which the student was declared to be academically ineligible;

(ii) returns to public school and reestablishes academic eligibility; or

(iii) enrolls in a private school and establishes academic eligibility.

(b) A public school student who has been declared to be behaviorally ineligible to

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participate in an extracurricular activity and who subsequently enrolls in a home school shall lose eligibility for participation in the extracurricular activity until the student meets eligibility standards as provided in Subsection (3).

(15) When selection to participate in an extracurricular activity at a public school is made on a competitive basis, a private school student and a home school student shall be eligible to try out for and participate in the activity as provided in this section.

(16) (a) If a student exits a public school to enroll in a private or home school mid-semester or during an activity season, and the student desires to participate in an extracurricular activity at the public school, the public school shall issue an interim academic assessment based on the student's work in each class.

(b) A student's academic eligibility to participate in an extracurricular activity under the circumstances described in Subsection (16)(a) shall be based on the student meeting public school academic eligibility standards at the time of exiting public school.

(c) A student may appeal an academic eligibility determination made under Subsection (16)(b) in accordance with procedures for appealing a public school student's academic eligibility.

Section ~~9~~12. Section **53G-6-706** is amended to read:

53G-6-706. Placement of a student of a home school, micro-education entity, or home-based education entity, who transfers to a public school.

(1) For the purposes of this section ~~[(a)]~~1.

~~[(a) "Home school student" means a student who attends a home school pursuant to Section 53G-6-204. (a)]~~

~~[(b) "Parent" (a)]~~1 "parent" means the same as that term is defined in Section 53G-6-201.

(2) ~~[When a home school student transfers from a home school]~~ When a student of a home school, micro-education entity, or home-based education entity transfers from a home school, micro-education entity, or home-based education entity to a public school, the public school shall place the student in the grade levels, classes, or courses that the student's parent and ~~[in consultation with]~~ the school administrator determine are appropriate based on the parent's assessment of the student's academic performance.

(3) (a) Within 30 days of ~~[a home school]~~ the student's placement in a public school

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grade level, class, or course, either the student's teacher or the student's parent may request a conference to consider changing the student's placement.

(b) If the student's teacher and the student's parent agree on a placement change, the public school shall place the student in the agreed upon grade level, class, or course.

(c) If the student's teacher and the student's parent do not agree on a placement change, the public school shall evaluate the student's subject matter mastery in accordance with Subsection (3)(d).

(d) The student's parent has the option of:

(i) allowing the public school to administer, to the student, assessments that are:

(A) regularly administered to public school students; and

(B) used to measure public school students' subject matter mastery and determine placement; or

(ii) having a private entity or individual administer assessments of subject matter mastery to the student at the parent's expense.

(e) After an evaluation of a student's subject matter mastery, a public school may change [a] the student's placement in a grade level, class, or course.

(4) [~~This~~] ~~[Pursuant to]~~ In accordance with Section 53G-6-702, this section does not apply to a student who is dual enrolled in a public school and a [~~home school pursuant to Section 53G-6-702.~~];

(a) home school;

(b) micro-education entity; or

(c) home-based education entity

Section 13. Section 53G-9-301 is amended to read:

53G-9-301. Definitions.

As used in this part:

(1) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(2) "Health official" means an individual designated by a local health department from within the local health department to consult and counsel parents and licensed health care providers, in accordance with Subsection 53G-9-304(2)(a).

(3) "Health official designee" means a licensed health care provider designated by a

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local health department, in accordance with Subsection 53G-9-304(2)(b), to consult with parents, licensed health care professionals, and school officials.

(4) "Immunization" or "immunize" means a process through which an individual develops an immunity to a disease, through vaccination or natural exposure to the disease.

(5) "Immunization record" means a record relating to a student that includes:

(a) information regarding each required vaccination that the student has received, including the date each vaccine was administered, verified by:

(i) a licensed health care provider;

(ii) an authorized representative of a local health department;

(iii) an authorized representative of the department;

(iv) a registered nurse; or

(v) a pharmacist;

(b) information regarding each disease against which the student has been immunized by previously contracting the disease; and

(c) an exemption form identifying each required vaccination from which the student is exempt, including all required supporting documentation described in Section 53G-9-303.

(6) "Legally responsible individual" means:

(a) a student's parent;

(b) the student's legal guardian;

(c) an adult brother or sister of a student who has no legal guardian; or

(d) the student, if the student:

(i) is an adult; or

(ii) is a minor who may consent to treatment under Section 26-10-9.

(7) "Licensed health care provider" means a health care provider who is licensed under

Title 58, Occupations and Professions, as:

(a) a medical doctor;

(b) an osteopathic doctor;

(c) a physician assistant; or

(d) an advanced practice registered nurse.

(8) "Local health department" means the same as that term is defined in Section 26A-1-102.

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(9) "Required vaccines" means vaccines required by department rule described in Section 53G-9-305.

(10) (a) "School" means any public or private:

~~[(a)]~~ (i) elementary or secondary school through grade 12;

~~[(b)]~~ (ii) preschool;

~~[(c)]~~ (iii) child care program, as that term is defined in Section 26-39-102;

~~[(d)]~~ (iv) nursery school; or

~~[(e)]~~ (v) kindergarten.

(b) "School" does not include:

(i) a home-based education entity; or

(ii) a micro-education entity.

(11) "Student" means an individual who attends a school.

(12) "Vaccinating" or "vaccination" means the administration of a vaccine.

(13) "Vaccination exemption form" means a form, described in Section 53G-9-304, that documents and verifies that a student is exempt from the requirement to receive one or more required vaccines.

(14) "Vaccine" means the substance licensed for use by the United States Food and Drug Administration that is injected into or otherwise administered to an individual to immunize the individual against a communicable disease.

~~{ Section 10. Section 53G-9-302 is amended to read:~~

~~———— 53G-9-302. Immunization required -- Exception -- Weighted pupil unit funding:~~

~~———— (1) A student may not attend a school unless:~~

~~———— (a) the school receives an immunization record from the legally responsible individual of the student, the student's former school, or a statewide registry that shows:~~

~~———— (i) that the student has received each vaccination required by the department under Section 53G-9-305; or~~

~~———— (ii) for any required vaccination that the student has not received, that the student:~~

~~———— (A) has immunity against the disease for which the vaccination is required, because the student previously contracted the disease as documented by a health care provider, as that term is defined in Section 78B-3-103; or~~

~~———— (B) is exempt from receiving the vaccination under Section 53G-9-303;~~

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~~—— (b) the student qualifies for conditional enrollment under Section 53G-9-308; or~~

~~—— (c) the student:~~

~~—— (i) is a student, as defined in Section 53E-3-903; and~~

~~—— (ii) complies with the immunization requirements for military children under Section 53E-3-905.~~

~~—— (2) An LEA may not receive weighted pupil unit money for a student who is not permitted to attend school under Subsection (1).~~

~~—— (3) Requirements under this section do not apply to a micro-education entity or a home-based education entity, as described in Section 53G-6-212.~~

‡