

Representative Raymond P. Ward proposes the following substitute bill:

**HEALTH AND HUMAN SERVICES RECODIFICATION -
CROSS REFERENCES, TITLES 58-63J**

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Raymond P. Ward

LONG TITLE

General Description:

This bill updates cross references to the Utah Health and Human Services Code in Titles 58 through 63J.

Highlighted Provisions:

This bill:

- makes technical updates in Titles 58 through 63J to cross references to the Utah Health and Human Services Code that are renumbered and amended in:
 - S.B. 38, Health and Human Services Recodification - Administration, Licensing, and Recovery Services;
 - S.B. 39, Health and Human Services Recodification - Health Care Assistance and Data;
 - S.B. 40, Health and Human Services Recodification - Health Care Delivery and Repeals; and
 - S.B. 41, Health and Human Services Recodification - Prevention, Supports, Substance Use and Mental Health; and
- makes technical and corresponding changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 This bill provides coordination clauses.

29 This bill provides revisor instructions.

30 **Utah Code Sections Affected:**

31 **AMENDS:**

32 **58-17b-622**, as last amended by Laws of Utah 2021, Chapter 340

33 **58-17b-701**, as last amended by Laws of Utah 2013, Chapter 364

34 **58-17b-902**, as last amended by Laws of Utah 2022, Chapters 253, 255

35 **58-17b-1002**, as enacted by Laws of Utah 2020, Chapter 372

36 **58-17b-1004**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4

37 **58-28-502**, as last amended by Laws of Utah 2022, Chapter 103

38 **58-31b-102**, as last amended by Laws of Utah 2022, Chapter 277

39 **58-31b-305**, as last amended by Laws of Utah 2019, Chapter 447

40 **58-31b-401**, as last amended by Laws of Utah 2021, Chapter 404

41 **58-31b-502**, as last amended by Laws of Utah 2022, Chapter 290

42 **58-31b-703**, as last amended by Laws of Utah 2016, Chapters 202, 207 and 208 and

43 last amended by Coordination Clause, Laws of Utah 2016, Chapter 202

44 **58-37-3.6**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

45 **58-37-3.7**, as last amended by Laws of Utah 2021, Chapters 337, 350 and further

46 amended by Revisor Instructions, Laws of Utah 2021, Chapter 337

47 **58-37-3.8**, as last amended by Laws of Utah 2019, First Special Session, Chapter 5

48 **58-37-3.9**, as last amended by Laws of Utah 2021, Chapter 350

49 **58-37-6.5**, as last amended by Laws of Utah 2021, Chapter 337

50 **58-37-7**, as last amended by Laws of Utah 2018, Chapter 145

51 **58-37-8**, as last amended by Laws of Utah 2022, Chapters 116, 415 and 430

52 **58-37-19**, as enacted by Laws of Utah 2019, Chapter 130

53 **58-37-22**, as enacted by Laws of Utah 2021, Chapter 165

54 **58-37f-102**, as last amended by Laws of Utah 2013, Chapter 130

55 **58-37f-201**, as last amended by Laws of Utah 2022, Chapter 116

56 **58-37f-301**, as last amended by Laws of Utah 2021, Chapters 104, 315

57 **58-37f-702**, as last amended by Laws of Utah 2019, Chapter 128
58 **58-41-4**, as last amended by Laws of Utah 2022, Chapter 415
59 **58-57-7**, as last amended by Laws of Utah 2011, Chapter 340
60 **58-60-114**, as last amended by Laws of Utah 2022, Chapter 335
61 **58-60-509**, as last amended by Laws of Utah 2022, Chapter 335
62 **58-61-602**, as last amended by Laws of Utah 2021, Chapter 283
63 **58-61-704**, as last amended by Laws of Utah 2022, Chapter 415
64 **58-61-713**, as last amended by Laws of Utah 2022, Chapter 335
65 **58-67-302**, as last amended by Laws of Utah 2020, Chapter 339
66 **58-67-304**, as last amended by Laws of Utah 2020, Chapters 12, 339
67 **58-67-502**, as last amended by Laws of Utah 2021, Chapter 337
68 **58-67-601**, as last amended by Laws of Utah 2017, Chapter 299
69 **58-67-702**, as last amended by Laws of Utah 2016, Chapters 202, 207 and 208 and last
70 amended by Coordination Clause, Laws of Utah 2016, Chapter 202
71 **58-68-302**, as last amended by Laws of Utah 2020, Chapter 339
72 **58-68-304**, as last amended by Laws of Utah 2020, Chapters 12, 339
73 **58-68-502**, as last amended by Laws of Utah 2021, Chapter 337
74 **58-68-601**, as last amended by Laws of Utah 2017, Chapter 299
75 **58-68-702**, as last amended by Laws of Utah 2016, Chapters 202, 207 and 208 and last
76 amended by Coordination Clause, Laws of Utah 2016, Chapter 202
77 **58-69-601**, as last amended by Laws of Utah 2013, Chapter 364
78 **58-69-702**, as enacted by Laws of Utah 2016, Chapter 207 and last amended by
79 Coordination Clause, Laws of Utah 2016, Chapter 207
80 **58-70a-102**, as last amended by Laws of Utah 2021, Chapters 312, 313
81 **58-70a-303**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1
82 **58-70a-503**, as last amended by Laws of Utah 2022, Chapter 290
83 **58-70a-505**, as last amended by Laws of Utah 2016, Chapters 202, 207 and 208 and last
84 amended by Coordination Clause, Laws of Utah 2016, Chapter 202
85 **58-71-601**, as last amended by Laws of Utah 2013, Chapter 364
86 **58-80a-601**, as renumbered and amended by Laws of Utah 2010, Chapter 127
87 **58-85-104**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

88 **58-88-201**, as enacted by Laws of Utah 2022, Chapter 353
89 **59-1-210**, as last amended by Laws of Utah 2010, Chapter 278
90 **59-1-403**, as last amended by Laws of Utah 2022, Chapter 447
91 **59-2-1901**, as enacted by Laws of Utah 2019, Chapter 453
92 **59-10-529**, as last amended by Laws of Utah 2021, Chapter 260
93 **59-10-1004**, as renumbered and amended by Laws of Utah 2006, Chapter 223
94 **59-10-1308**, as last amended by Laws of Utah 2010, Chapter 278
95 **59-10-1320**, as enacted by Laws of Utah 2018, Chapter 414
96 **59-12-102**, as last amended by Laws of Utah 2021, Chapters 64, 367 and 414 and last
97 amended by Coordination Clause, Laws of Utah 2021, Chapter 367
98 **59-12-103**, as last amended by Laws of Utah 2022, Chapters 77, 106 and 433
99 **59-12-104.10**, as last amended by Laws of Utah 2019, First Special Session, Chapter 5
100 **59-12-801**, as last amended by Laws of Utah 2014, Chapter 50
101 **59-14-807**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20
102 **61-1-13**, as last amended by Laws of Utah 2020, Chapter 77
103 **61-1-201**, as enacted by Laws of Utah 2018, Chapter 159
104 **63A-5b-303**, as last amended by Laws of Utah 2022, Chapters 169, 421
105 **63A-5b-607**, as last amended by Laws of Utah 2022, Chapters 169, 443
106 **63A-5b-910**, as last amended by Laws of Utah 2022, Chapter 421
107 **63A-9-701**, as last amended by Laws of Utah 2003, Chapter 22
108 **63A-13-102**, as last amended by Laws of Utah 2022, Chapter 255
109 **63A-13-204**, as last amended by Laws of Utah 2016, Chapters 222, 348
110 **63A-13-301**, as last amended by Laws of Utah 2016, Chapter 225
111 **63A-16-803**, as renumbered and amended by Laws of Utah 2021, Chapter 344
112 **63A-17-806**, as last amended by Laws of Utah 2022, Chapter 169
113 **63A-17-1001**, as renumbered and amended by Laws of Utah 2021, Chapter 344
114 **63B-16-401**, as last amended by Laws of Utah 2013, Chapter 465
115 **63C-9-403**, as last amended by Laws of Utah 2022, Chapters 421, 443
116 **63C-18-102**, as last amended by Laws of Utah 2020, Chapter 303
117 **63C-18-202**, as last amended by Laws of Utah 2021, Chapter 76
118 **63C-18-203**, as last amended by Laws of Utah 2021, Chapter 76

119 **63G-2-202**, as last amended by Laws of Utah 2021, Chapter 231
120 **63G-2-302**, as last amended by Laws of Utah 2022, Chapters 169, 334
121 **63G-2-305**, as last amended by Laws of Utah 2022, Chapters 11, 109, 198, 201, 303,
122 335, 388, 391, and 415
123 **63G-3-501**, as last amended by Laws of Utah 2022, Chapter 443
124 **63G-4-102**, as last amended by Laws of Utah 2022, Chapter 307
125 **63G-7-201**, as last amended by Laws of Utah 2021, Chapter 352
126 **63I-1-262**, as last amended by Laws of Utah 2022, Chapters 34, 35, 149, 257, and 335
127 **63I-2-262**, as last amended by Laws of Utah 2022, Chapters 114, 334
128 **63J-1-315**, as last amended by Laws of Utah 2022, Chapter 255
129 RENUMBERS AND AMENDS:
130 **63A-5b-1109**, (Renumbered from 26-29-1, as last amended by Laws of Utah 2022,
131 Chapter 421)
132 REPEALS AND REENACTS:
133 **63I-1-226**, as last amended by Laws of Utah 2022, Chapters 194, 206, 224, 253, 255,
134 347, and 451
135 **63I-2-226**, as last amended by Laws of Utah 2022, Chapters 255, 365
136 **Utah Code Sections Affected by Coordination Clause:**
137 **63I-1-226**, as last amended by Laws of Utah 2022, Chapters 194, 206, 224, 253, 255,
138 347, and 451
139 **63I-1-262**, as last amended by Laws of Utah 2022, Chapters 34, 35, 149, 257, and 335
140 **63I-2-226**, as last amended by Laws of Utah 2022, Chapters 255 and 365

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

143 Section 1. Section **58-17b-622** is amended to read:

144 **58-17b-622. Pharmacy benefit management services -- Auditing of pharmacy**
145 **records -- Appeals.**

146 (1) For purposes of this section:

147 (a) "Audit" means a review of the records of a pharmacy by or on behalf of an entity
148 that finances or reimburses the cost of health care services or pharmaceutical products.

149 (b) "Audit completion date" means:

(i) for an audit that does not require an on-site visit at the pharmacy, the date on which the pharmacy, in response to the initial audit request, submits records or other documents to the entity conducting the audit, as determined by:

(A) postmark or other evidence of the date of mailing; or

(B) the date of transmission if the records or other documents are transmitted electronically; and

(ii) for an audit that requires an on-site visit at a pharmacy, the date on which the auditing entity completes the on-site visit, including any follow-up visits or analysis which shall be completed within 60 days after the day on which the on-site visit begins.

(c) "Entity" includes:

(i) a pharmacy benefits manager or coordinator;

(ii) a health benefit plan;

(iii) a third party administrator as defined in Section 31A-1-301;

(iv) a state agency; or

(v) a company, group, or agent that represents, or is engaged by, one of the entities described in Subsections (1)(c)(i) through (iv).

(d) "Fraud" means an intentional act of deception, misrepresentation, or concealment in order to gain something of value.

(e) "Health benefit plan" means:

(i) a health benefit plan as defined in Section 31A-1-301; or

(ii) a health, dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(2) (a) Except as provided in Subsection (2)(b), this section applies to:

(i) a contract for the audit of a pharmacy entered into, amended, or renewed on or after July 1, 2012; and

(ii) an entity that conducts an audit of the pharmacy records of a pharmacy licensed under this chapter.

(b) This section does not apply to an audit of pharmacy records:

(i) for a federally funded prescription drug program, including:

(A) the state Medicaid program;

(B) the Medicare Part D program;

181 (C) a Department of Defense prescription drug program; and

182 (D) a Veterans Affairs prescription drug program; or

183 (ii) when fraud or other intentional and willful misrepresentation is alleged and the
184 pharmacy audit entity has evidence that the pharmacy's actions reasonably indicate fraud or
185 intentional and willful misrepresentation.

186 (3) (a) An audit that involves clinical or professional judgment shall be conducted by
187 or in consultation with a pharmacist who is employed by or working with the auditing entity
188 and who is licensed in the state or another state.

189 (b) If an audit is conducted on site at a pharmacy, the entity conducting the audit:

190 (i) shall give the pharmacy 10 days advanced written notice of:

191 (A) the audit; and

192 (B) the range of prescription numbers or a date range included in the audit; and

193 (ii) may not audit a pharmacy during the first five business days of the month, unless
194 the pharmacy agrees to the timing of the audit.

195 (c) An entity may not audit claims:

196 (i) submitted more than 18 months prior to the audit, unless:

197 (A) required by federal law; or

198 (B) the originating prescription is dated in the preceding six months; or

199 (ii) that exceed 200 selected prescription claims.

200 (4) (a) An entity may not:

201 (i) include dispensing fees in the calculations of overpayments unless the prescription
202 is considered a misfill;

203 (ii) recoup funds for prescription clerical or recordkeeping errors, including
204 typographical errors, scrivener's errors, and computer errors on a required document or record
205 unless the audit entity is alleging fraud or other intentional or willful misrepresentation and the
206 audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional
207 and willful misrepresentation;

208 (iii) recoup funds for refills dispensed in accordance with Section 58-17b-608.1, unless
209 the health benefit plan does not cover the prescription drug dispensed by the pharmacy;

210 (iv) collect any funds, charge-backs, or penalties until the audit and all appeals are
211 final, unless the audit entity is alleging fraud or other intentional or willful misrepresentation

and the audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional and willful misrepresentation; or

(v) recoup funds or collect any funds, charge-backs, or penalties from a pharmacy in response to a request for audit unless the pharmacy confirms to the entity the date on which the pharmacy received the request for audit.

(b) Auditors shall only have access to previous audit reports on a particular pharmacy if the previous audit was conducted by the same entity except as required for compliance with state or federal law.

(5) A pharmacy subject to an audit:

(a) may use one or more of the following to validate a claim for a prescription, refill, or change in a prescription:

(i) electronic or physical copies of records of a health care facility, or a health care provider with prescribing authority;

(ii) any prescription that complies with state law;

(iii) the pharmacy's own physical or electronic records; or

(iv) the physical or electronic records, or valid copies of the physical or electronic records, of a practitioner or health care facility as defined in Section ~~[26-21-2]~~ [26B-2-201](#); and

(b) may not be required to provide the following records to validate a claim for a prescription, refill, or change in a prescription:

(i) if the prescription was handwritten, the physical handwritten version of the prescription; or

(ii) a note from the practitioner regarding the patient or the prescription that is not otherwise required for a prescription under state or federal law.

(6) (a) (i) An entity that audits a pharmacy shall establish:

(A) a maximum time for the pharmacy to submit records or other documents to the entity following receipt of an audit request for records or documents; and

(B) a maximum time for the entity to provide the pharmacy with a preliminary audit report following submission of records under Subsection (6)(a)(i)(A).

(ii) The time limits established under Subsections (6)(a)(i)(A) and (B):

(A) shall be identical; and

(B) may not be less than seven days or more than 60 days.

(iii) An entity that audits a pharmacy may not, after the audit completion date, request additional records or other documents from the pharmacy to complete the preliminary audit report described in Subsection (6)(b).

(b) An entity that audits a pharmacy shall provide the pharmacy with a preliminary audit report, delivered to the pharmacy or its corporate office of record, within the time limit established under Subsection (6)(a)(i)(B).

(c) (i) Except as provided in Subsection (6)(c)(ii), a pharmacy has 30 days following receipt of the preliminary audit report to respond to questions, provide additional documentation, and comment on and clarify findings of the audit.

(ii) An entity may grant a reasonable extension under Subsection (6)(c)(i) upon request by the pharmacy.

(iii) Receipt of the report under Subsection (6)(c)(i) shall be determined by:

(A) postmark or other evidence of the date of mailing; or

(B) the date of transmission if the report is transmitted electronically.

(iv) If a dispute exists between the records of the auditing entity and the pharmacy, the records maintained by the pharmacy shall be presumed valid for the purpose of the audit.

(7) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow:

(a) the pharmacy to resubmit a claim using any commercially reasonable method, including fax, mail, or electronic claims submission provided that the period of time when a claim may be resubmitted has not expired under the rules of the plan sponsor; and

(b) the health benefit plan or other entity that finances or reimburses the cost of health care services or pharmaceutical products to rerun the claim if the health benefit plan or other entity chooses to rerun the claim at no cost to the pharmacy.

(8) (a) Within 60 days after the completion of the appeals process under Subsection (9), a final audit report shall be delivered to the pharmacy or its corporate office of record.

(b) The final audit report shall include a disclosure of any money recovered by the entity that conducted the audit.

(9) (a) An entity that audits a pharmacy shall establish a written appeals process for appealing a preliminary audit report and a final audit report, and shall provide the pharmacy with notice of the written appeals process.

(b) If the pharmacy benefit manager's contract or provider manual contains the information required by this Subsection (9), the requirement for notice is met.

Section 2. Section **58-17b-701** is amended to read:

58-17b-701. Mentally incompetent or incapacitated pharmacist -- Division action and procedures.

(1) As used in this section:

(a) "Incapacitated person" is a person who is incapacitated, as defined in Section [75-1-201](#).

(b) "Mental illness" is as defined in Section [~~62A-15-602~~] [26B-5-301](#).

(2) If a court of competent jurisdiction determines a pharmacist is an incapacitated person, or that the pharmacist has a mental illness and is unable to safely engage in the practice of pharmacy, the director shall immediately suspend the license of the pharmacist upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the pharmacist, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a pharmacist, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing pharmacy with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the pharmacist with a notice of hearing on the sole issue of the capacity of the pharmacist to competently and safely engage in the practice of pharmacy.

(b) The hearing shall be conducted under Section [58-1-109](#) and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every pharmacist who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the pharmacist's own expense to an immediate mental or physical examination when directed in writing by the division, with the consent of a majority of the board, to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or

examination in any proceeding regarding the license of the pharmacist, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the pharmacist has a mental illness, is incapacitated or otherwise unable to practice pharmacy with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the pharmacist's patients or the general public.

(c) (i) Failure of a pharmacist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the pharmacist's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the pharmacist and was not related directly to the illness or incapacity of the pharmacist.

(5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the pharmacist's patients or the general public.

(6) A pharmacist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the pharmacist, under procedures established by division rule, regarding any change in the pharmacist's condition, to determine whether:

(a) the pharmacist is or is not able to safely and competently engage in the practice of pharmacy; and

(b) the pharmacist is qualified to have the pharmacist's licensure to practice under this chapter restored completely or in part.

Section 3. Section 58-17b-902 is amended to read:

58-17b-902. Definitions.

As used in this part:

- (1) "Assisted living facility" means the same as that term is defined in Section ~~26-21-2~~ [26B-2-201](#).
- (2) "Cancer drug" means a drug that controls or kills neoplastic cells and includes a drug used in chemotherapy to destroy cancer cells.
- (3) "Charitable clinic" means a charitable nonprofit corporation that:
 - (a) holds a valid exemption from federal income taxation issued under Section 501(a), Internal Revenue Code;
 - (b) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;
 - (c) provides, on an outpatient basis, for a period of less than 24 consecutive hours, to an individual not residing or confined at a facility owned or operated by the charitable nonprofit corporation:
 - (i) advice;
 - (ii) counseling;
 - (iii) diagnosis;
 - (iv) treatment;
 - (v) surgery; or
 - (vi) care or services relating to the preservation or maintenance of health; and
 - (d) has a licensed outpatient pharmacy.
- (4) "Charitable pharmacy" means an eligible pharmacy that is operated by a charitable clinic.
- (5) "County health department" means the same as that term is defined in Section [26A-1-102](#).
- (6) "Donated prescription drug" means a prescription drug that an eligible donor or individual donates to an eligible pharmacy under the program.
- (7) "Eligible donor" means a donor that donates a prescription drug from within the state and is:
 - (a) a nursing care facility;
 - (b) an assisted living facility;

(c) a licensed intermediate care facility for people with an intellectual disability;

(d) a manufacturer;

(e) a pharmaceutical wholesale distributor;

(f) an eligible pharmacy; or

(g) a physician's office.

(8) "Eligible pharmacy" means a pharmacy that:

(a) is registered by the division as eligible to participate in the program; and

(b) (i) is licensed in the state as a Class A retail pharmacy; or

(ii) is operated by:

(A) a county;

(B) a county health department;

(C) a pharmacy under contract with a county health department;

(D) the Department of Health and Human Services created in Section 26B-1-201; or

(E) a charitable clinic.

(9) (a) "Eligible prescription drug" means a prescription drug, described in Section 58-17b-904, that is not:

(i) except as provided in Subsection (9)(b), a controlled substance; or

(ii) a drug that can only be dispensed to a patient registered with the drug's manufacturer in accordance with federal Food and Drug Administration requirements.

(b) "Eligible prescription drug" includes a medication-assisted treatment drug that may be accepted, transferred, and dispensed under the program in accordance with federal law.

(10) "Licensed intermediate care facility for people with an intellectual disability" means the same as that term is defined in Section 58-17b-503.

(11) "Medically indigent individual" means an individual who:

(a) (i) does not have health insurance; and

(ii) lacks reasonable means to purchase prescribed medications; or

(b) (i) has health insurance; and

(ii) lacks reasonable means to pay the insured's portion of the cost of the prescribed medications.

(12) "Medication-assisted treatment drug" means buprenorphine prescribed to treat substance use withdrawal symptoms or an opiate use disorder.

(13) "Nursing care facility" means the same as that term is defined in Section ~~[26-18-501]~~ [26B-2-201](#).

(14) "Physician's office" means a fixed medical facility that:
(a) is staffed by a physician, physician's assistant, nurse practitioner, or registered nurse, licensed under ~~[Title 58, Occupations and Professions]~~ [this title](#); and
(b) treats an individual who presents at, or is transported to, the facility.

(15) "Program" means the Charitable Prescription Drug Recycling Program created in Section [58-17b-903](#).

(16) "Unit pack" means the same as that term is defined in Section [58-17b-503](#).

(17) "Unlawful conduct" means the same as that term is defined in Sections [58-1-501](#) and [58-17b-501](#).

(18) "Unprofessional conduct" means the same as that term is defined in Sections [58-1-501](#) and [58-17b-502](#).

Section 4. Section **58-17b-1002** is amended to read:

58-17b-1002. Definitions.

As used in this part:

(1) "Epinephrine auto-injector" means the same as that term is defined in Section ~~[26-41-102]~~ [26B-4-401](#).

(2) "Local health department" means the same as that term is defined in Section [26A-1-102](#).

(3) "Physician" means the same as that term is defined in Section [58-67-102](#).

(4) "Qualified adult" means the same as that term is defined in Section ~~[26-41-102]~~ [26B-4-401](#).

(5) "Qualified epinephrine auto-injector entity" means the same as that term is defined in Section ~~[26-41-102]~~ [26B-4-401](#).

(6) "Qualified stock albuterol entity" means the same as that term is defined in Section ~~[26-41-102]~~ [26B-4-401](#).

(7) "Stock albuterol" means the same as that term is defined in Section ~~[26-41-102]~~ [26B-4-401](#).

Section 5. Section **58-17b-1004** is amended to read:

58-17b-1004. Authorization to dispense an epinephrine auto-injector and stock

albuterol pursuant to a standing order.

(1) Notwithstanding any other provision of this chapter, a pharmacist or pharmacy intern may dispense an epinephrine auto-injector:

(a) (i) to a qualified adult for use in accordance with [~~Title 26, Chapter 41, Emergency Response for Life-threatening Conditions~~] Title 26B, Chapter 4, Part 4, School Health; or

(ii) to a qualified epinephrine auto-injector entity for use in accordance with [~~Title 26, Chapter 41, Emergency Response for Life-threatening Conditions~~] Title 26B, Chapter 4, Part 4, School Health;

(b) pursuant to a standing prescription drug order made in accordance with Section 58-17b-1005;

(c) without any other prescription drug order from a person licensed to prescribe an epinephrine auto-injector; and

(d) in accordance with the dispensing guidelines in Section 58-17b-1006.

(2) Notwithstanding any other provision of this chapter, a pharmacist or pharmacy intern may dispense stock albuterol:

(a) (i) to a qualified adult for use in accordance with [~~Title 26, Chapter 41, Emergency Response for Life-threatening Conditions~~] Title 26B, Chapter 4, Part 4, School Health; or

(ii) to a qualified stock albuterol entity for use in accordance with [~~Title 26, Chapter 41, Emergency Response for Life-threatening Conditions~~] Title 26B, Chapter 4, Part 4, School Health;

(b) pursuant to a standing prescription drug order made in accordance with Section 58-17b-1005;

(c) without any other prescription drug order from a person licensed to prescribe stock albuterol; and

(d) in accordance with the dispensing guidelines in Section 58-17b-1006.

Section 6. Section 58-28-502 is amended to read:

58-28-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definitions in Section 58-1-501:

(a) applying unsanitary methods or procedures in the treatment of any animal, contrary to rules adopted by the board and approved by the division;

(b) procuring any fee or recompense on the assurance that a manifestly incurable diseased condition of the body of an animal can be permanently cured;

(c) selling any biologics containing living or dead organisms or products or such organisms, except in a manner which will prevent indiscriminate use of such biologics;

(d) swearing falsely in any testimony or affidavit, relating to, or in the course of, the practice of veterinary medicine, surgery, or dentistry;

(e) willful failure to report any dangerous, infectious, or contagious disease, as required by law;

(f) willful failure to report the results of any medical tests, as required by law, or rule adopted pursuant to law;

(g) violating Chapter 37, Utah Controlled Substances Act;

(h) delegating tasks to unlicensed assistive personnel in violation of standards of the profession and in violation of Subsection (2); and

(i) making any unsubstantiated claim of superiority in training or skill as a veterinarian in the performance of professional services.

(2) (a) "Unprofessional conduct" does not include the following:

(i) delegating to a veterinary technologist, while under the indirect supervision of a veterinarian licensed under this chapter, patient care and treatment that requires a technical understanding of veterinary medicine if written or oral instructions are provided to the technologist by the veterinarian;

(ii) delegating to a state certified veterinary technician, while under the direct or indirect supervision of a veterinarian licensed under this chapter, patient care and treatment that requires a technical understanding of veterinary medicine if the veterinarian provides written or oral instructions to the state certified veterinary technician;

(iii) delegating to a veterinary technician, while under the direct supervision of a veterinarian licensed under this chapter, patient care and treatment that requires a technical understanding of veterinary medicine if written or oral instructions are provided to the technician by the veterinarian;

(iv) delegating to a veterinary assistant, under the immediate supervision of a licensed veterinarian, tasks that are consistent with the standards and ethics of the profession;

(v) delegating to an individual described in Subsection 58-28-307(16), under the direct

supervision of a licensed veterinarian, the administration of a sedative drug for teeth floating;
or

(vi) discussing the effects of the following on an animal with the owner of an animal:

(A) a cannabinoid or industrial hemp product, as those terms are defined in Section
4-41-102; or

(B) THC or medical cannabis, as those terms are defined in Section ~~26-61a-102~~
26B-4-201.

(b) The delegation of tasks permitted under Subsections (2)(a)(i) through (v) does not
include:

(i) diagnosing;

(ii) prognosing;

(iii) surgery; or

(iv) prescribing drugs, medicines, or appliances.

(3) Notwithstanding any provision of this section, a veterinarian licensed under this
chapter is not prohibited from engaging in a discussion described in Subsection (2)(a)(vi).

Section 7. Section **58-31b-102** is amended to read:

58-31b-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Administrative penalty" means a monetary fine or citation imposed by the division
for acts or omissions determined to be unprofessional or unlawful conduct in accordance with a
fine schedule established by division rule made in accordance with Title 63G, Chapter 3, Utah
Administrative Rulemaking Act, and as a result of an adjudicative proceeding conducted in
accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) "Applicant" means an individual who applies for licensure or certification under
this chapter by submitting a completed application for licensure or certification and the
required fees to the department.

(3) "Approved education program" means a nursing education program that is
accredited by an accrediting body for nursing education that is approved by the United States
Department of Education.

(4) "Board" means the Board of Nursing created in Section 58-31b-201.

(5) "Diagnosis" means the identification of and discrimination between physical and

psychosocial signs and symptoms essential to the effective execution and management of health care.

(6) "Examinee" means an individual who applies to take or does take any examination required under this chapter for licensure.

(7) "Licensee" means an individual who is licensed or certified under this chapter.

(8) "Long-term care facility" means any of the following facilities licensed by the ~~[Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act]~~ Department of Health and Human Services pursuant to Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection:

(a) a nursing care facility;

(b) a small health care facility;

(c) an intermediate care facility for people with an intellectual disability;

(d) an assisted living facility Type I or II; or

(e) a designated swing bed unit in a general hospital.

(9) "Medication aide certified" means a certified nurse aide who:

(a) has a minimum of 2,000 hours experience working as a certified nurse aide;

(b) has received a minimum of 60 hours of classroom and 40 hours of practical training that is approved by the division in collaboration with the board, in administering routine medications to patients or residents of long-term care facilities; and

(c) is certified by the division as a medication aide certified.

(10) (a) "Practice as a medication aide certified" means the limited practice of nursing under the supervision, as defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of a licensed nurse, involving routine patient care that requires minimal or limited specialized or general knowledge, judgment, and skill, to an individual who:

(i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual disability; and

(ii) is in a regulated long-term care facility.

(b) "Practice as a medication aide certified":

(i) includes:

(A) providing direct personal assistance or care; and

(B) administering routine medications to patients in accordance with a formulary and protocols to be defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) does not include assisting a resident of an assisted living facility, a long term care facility, or an intermediate care facility for people with an intellectual disability to self administer a medication, as regulated by the Department of ~~Health~~ Health and Human Services by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Practice of advanced practice registered nursing" means the practice of nursing within the generally recognized scope and standards of advanced practice registered nursing as defined by rule and consistent with professionally recognized preparation and education standards of an advanced practice registered nurse by a person licensed under this chapter as an advanced practice registered nurse. "Practice of advanced practice registered nursing" includes:

(a) maintenance and promotion of health and prevention of disease;

(b) diagnosis, treatment, correction, consultation, and referral;

(c) prescription or administration of prescription drugs or devices including:

(i) local anesthesia;

(ii) Schedule III-V controlled substances; and

(iii) Subject to Section [58-31b-803](#), Schedule II controlled substances; or

(d) the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a licensed health care professional by an advanced practice registered nurse specializing as a certified registered nurse anesthetist, including:

(i) preanesthesia preparation and evaluation including:

(A) performing a preanesthetic assessment of the patient;

(B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and

(C) selecting, ordering, or administering appropriate medications;

(ii) anesthesia induction, maintenance, and emergence, including:

(A) selecting and initiating the planned anesthetic technique;

(B) selecting and administering anesthetics and adjunct drugs and fluids; and

(C) administering general, regional, and local anesthesia;

584 (iii) postanesthesia follow-up care, including:
585 (A) evaluating the patient's response to anesthesia and implementing corrective
586 actions; and
587 (B) selecting, ordering, or administering the medications and studies listed in this
588 Subsection (11)(d);
589 (iv) other related services within the scope of practice of a certified registered nurse
590 anesthetist, including:
591 (A) emergency airway management;
592 (B) advanced cardiac life support; and
593 (C) the establishment of peripheral, central, and arterial invasive lines; and
594 (v) for purposes of this Subsection (11)(d), "upon the request of a licensed health care
595 professional":
596 (A) means a health care professional practicing within the scope of the health care
597 professional's license, requests anesthesia services for a specific patient; and
598 (B) does not require an advanced practice registered nurse specializing as a certified
599 registered nurse anesthetist to obtain additional authority to select, administer, or provide
600 preoperative, intraoperative, or postoperative anesthesia care and services.
601 (12) "Practice of nursing" means assisting individuals or groups to maintain or attain
602 optimal health, implementing a strategy of care to accomplish defined goals and evaluating
603 responses to care and treatment, and requires substantial specialized or general knowledge,
604 judgment, and skill based upon principles of the biological, physical, behavioral, and social
605 sciences. "Practice of nursing" includes:
606 (a) initiating and maintaining comfort measures;
607 (b) promoting and supporting human functions and responses;
608 (c) establishing an environment conducive to well-being;
609 (d) providing health counseling and teaching;
610 (e) collaborating with health care professionals on aspects of the health care regimen;
611 (f) performing delegated procedures only within the education, knowledge, judgment,
612 and skill of the licensee;
613 (g) delegating nursing tasks that may be performed by others, including an unlicensed
614 assistive personnel; and

(h) supervising an individual to whom a task is delegated under Subsection (12)(g) as the individual performs the task.

(13) "Practice of practical nursing" means the performance of nursing acts in the generally recognized scope of practice of licensed practical nurses as defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as provided in this Subsection (13) by an individual licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Practical nursing acts include:

- (a) contributing to the assessment of the health status of individuals and groups;
- (b) participating in the development and modification of the strategy of care;
- (c) implementing appropriate aspects of the strategy of care;
- (d) maintaining safe and effective nursing care rendered to a patient directly or indirectly; and
- (e) participating in the evaluation of responses to interventions.

(14) "Practice of registered nursing" means performing acts of nursing as provided in this Subsection (14) by an individual licensed under this chapter as a registered nurse within the generally recognized scope of practice of registered nurses as defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Registered nursing acts include:

- (a) assessing the health status of individuals and groups;
- (b) identifying health care needs;
- (c) establishing goals to meet identified health care needs;
- (d) planning a strategy of care;
- (e) prescribing nursing interventions to implement the strategy of care;
- (f) implementing the strategy of care;
- (g) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;
- (h) evaluating responses to interventions;
- (i) teaching the theory and practice of nursing; and
- (j) managing and supervising the practice of nursing.

(15) "Registered nurse apprentice" means an individual licensed under Subsection 58-31b-301(2)(b) who is learning and engaging in the practice of registered nursing under the indirect supervision of an individual licensed under:

- (a) Subsection 58-31b-301(2)(c), (e), or (f);
- (b) Chapter 67, Utah Medical Practice Act; or
- (c) Chapter 68, Utah Osteopathic Medical Practice Act.

(16) "Routine medications":

(a) means established medications administered to a medically stable individual as determined by a licensed health care practitioner or in consultation with a licensed medical practitioner; and

(b) is limited to medications that are administered by the following routes:

- (i) oral;
- (ii) sublingual;
- (iii) buccal;
- (iv) eye;
- (v) ear;
- (vi) nasal;
- (vii) rectal;
- (viii) vaginal;
- (ix) skin ointments, topical including patches and transdermal;
- (x) premeasured medication delivered by aerosol/nebulizer; and
- (xi) medications delivered by metered hand-held inhalers.

(17) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-31b-501.

(18) "Unlicensed assistive personnel" means any unlicensed individual, regardless of title, who is delegated a task by a licensed nurse as permitted by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the standards of the profession.

(19) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-31b-502 and as may be further defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 8. Section **58-31b-305** is amended to read:

58-31b-305. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license or certification under this chapter in accordance with a two-year renewal cycle established by rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles the division administers.

(2) The division shall renew the license of a licensee who, at the time of renewal:

(a) completes and submits an application for renewal in a form prescribed by the division;

(b) pays a renewal fee established by the division under Section [63J-1-504](#);

(c) views a suicide prevention video described in Section [58-1-601](#) and submits proof in the form required by the division; and

(d) meets continuing competency requirements as established by rule.

(3) In addition to the renewal requirements under Subsection (2), a person licensed as an advanced practice registered nurse shall be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of that qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.

(4) In addition to the requirements described in Subsections (2) and (3), an advanced practice registered nurse licensee specializing in psychiatric mental health nursing who, as of the day on which the division originally issued the licensee's license had not completed the division's clinical practice requirements in psychiatric and mental health nursing, shall, to qualify for renewal:

(a) if renewing less than two years after the day on which the division originally issued the license, demonstrate satisfactory progress toward completing the clinical practice requirements; or

(b) have completed the clinical practice requirements.

(5) Each license or certification automatically expires on the expiration date shown on the license or certification unless renewed in accordance with Section [58-1-308](#).

(6) The division shall accept and apply toward an hour requirement that the division establishes under Subsection (2)(d) continuing education that an advanced practice registered nurse completes in accordance with Section ~~[26-61a-106]~~ [26B-4-204](#).

Section 9. Section **58-31b-401** is amended to read:

58-31b-401. Grounds for denial of licensure or certification and disciplinary proceedings.

(1) (a) As used in this section, "licensed" or "license" includes certified or certification under this chapter.

(b) A term or condition applied to the word "nurse" under this section applies to a medication aide certified.

(2) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section [58-1-401](#).

(3) (a) (i) Subject to Subsection (7), if a court of competent jurisdiction determines a nurse is incapacitated as defined in Section [75-1-201](#) or that the nurse has a mental illness, as defined in Section [~~62A-15-602~~] [26B-5-301](#), and is unable to safely engage in the practice of nursing, the director shall immediately suspend the license of the nurse upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending.

(ii) The director shall promptly notify the nurse in writing of a suspension under Subsection (3)(a)(i).

(b) (i) Subject to Subsection (7), if the division and the majority of the board find reasonable cause to believe a nurse who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing nursing with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the nurse with a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage in the practice of nursing.

(ii) Except as provided in Subsection (4), the hearing described in Subsection (3)(b)(i) shall be conducted under Section [58-1-109](#) and Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives

739 consent to:

740 (i) submitting to an immediate mental or physical examination, at the nurse's expense
741 and by a division-approved practitioner selected by the nurse when directed in writing by the
742 division and a majority of the board to do so; and

743 (ii) the admissibility of the reports of the examining practitioner's testimony or
744 examination, and waives all objections on the ground the reports constitute a privileged
745 communication.

746 (b) The examination may be ordered by the division, with the consent of a majority of
747 the board, only upon a finding of reasonable cause to believe:

748 (i) the nurse has a mental illness, is incapacitated, or otherwise unable to practice
749 nursing with reasonable skill and safety; and

750 (ii) immediate action by the division and the board is necessary to prevent harm to the
751 nurse's patients or the general public.

752 (c) (i) Failure of a nurse to submit to the examination ordered under this section is a
753 ground for the division's immediate suspension of the nurse's license by written order of the
754 director.

755 (ii) The division may enter the order of suspension without further compliance with
756 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
757 submit to the examination ordered under this section was due to circumstances beyond the
758 control of the nurse and was not related directly to the illness or incapacity of the nurse.

759 (5) (a) A nurse whose license is suspended under Subsection (3) or (4)(c) has the right
760 to a hearing to appeal the suspension within 10 days after the license is suspended.

761 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
762 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
763 for the continuance of the order of suspension in order to prevent harm to the nurse's patients or
764 the general public.

765 (6) A nurse whose license is revoked, suspended, or in any way restricted under this
766 section may request the division and the board to consider, at reasonable intervals, evidence
767 presented by the nurse, under procedures established by division rule, regarding any change in
768 the nurse's condition, to determine whether:

769 (a) the nurse is or is not able to safely and competently engage in the practice of

nursing; and

(b) the nurse is qualified to have the nurse's license to practice under this chapter restored completely or in part.

(7) The division may not refuse, revoke, suspend, or in any way restrict an applicant or licensee's license under this chapter solely because the applicant or licensee seeks or participates in mental health or substance abuse treatment.

(8) Section 63G-2-206 may not be construed as limiting the authority of the division to report current significant investigative information to the coordinated licensure information system for transmission to party states as required of the division by Article VII of the Nurse Licensure Compact - Revised in Section 58-31e-102.

Section 10. Section 58-31b-502 is amended to read:

58-31b-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes:

(a) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position or practice as a nurse or practice as a medication aide certified;

(b) failure to provide nursing service or service as a medication aide certified in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

(c) engaging in sexual relations with a patient during any:

(i) period when a generally recognized professional relationship exists between the person licensed or certified under this chapter and the patient; or

(ii) extended period when a patient has reasonable cause to believe a professional relationship exists between the person licensed or certified under the provisions of this chapter and the patient;

(d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using information about a patient or exploiting the licensee's or the person with a certification's professional relationship between the licensee or holder of a certification under this chapter and the patient; or

801 (ii) exploiting the patient by use of the licensee's or person with a certification's
802 knowledge of the patient obtained while acting as a nurse or a medication aide certified;
803 (e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;
804 (f) unauthorized taking or personal use of nursing supplies from an employer;
805 (g) unauthorized taking or personal use of a patient's personal property;
806 (h) unlawful or inappropriate delegation of nursing care;
807 (i) failure to exercise appropriate supervision of persons providing patient care services
808 under supervision of the licensed nurse;
809 (j) employing or aiding and abetting the employment of an unqualified or unlicensed
810 person to practice as a nurse;
811 (k) failure to file or record any medical report as required by law, impeding or
812 obstructing the filing or recording of such a report, or inducing another to fail to file or record
813 such a report;
814 (l) breach of a statutory, common law, regulatory, or ethical requirement of
815 confidentiality with respect to a person who is a patient, unless ordered by a court;
816 (m) failure to pay a penalty imposed by the division;
817 (n) prescribing a Schedule II controlled substance without complying with the
818 requirements in Section 58-31b-803, if applicable;
819 (o) violating Section 58-31b-801;
820 (p) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part
821 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if
822 applicable;
823 (q) falsely making an entry in, or altering, a medical record with the intent to conceal:
824 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
825 or an individual under the direction or control of an individual licensed under this chapter; or
826 (ii) conduct described in Subsections (1)(a) through (o) or Subsection 58-1-501(1); or
827 (r) violating the requirements of [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~]
828 Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.
829 (2) "Unprofessional conduct" does not include, in accordance with [~~Title 26, Chapter~~
830 ~~61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and
831 Medical Cannabis, when registered as a qualified medical provider, or acting as a limited

medical provider, as those terms are defined in Section ~~[26-61a-102]~~ 26B-4-201, recommending the use of medical cannabis.

(3) Notwithstanding Subsection (2), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for an advanced practice registered nurse described in Subsection (2).

Section 11. Section **58-31b-703** is amended to read:

58-31b-703. Opiate antagonist -- Exclusion from unprofessional or unlawful conduct.

(1) As used in this section:

(a) "Dispense" means the same as that term is defined in Section 58-17b-102.

(b) "Increased risk" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(c) "Opiate antagonist" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(d) "Opiate-related drug overdose event" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:

(a) in a good faith effort to assist:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(ii) a family member of, friend of, or other person, including a person described in Subsections ~~[26-55-107(1)(a)(i)(A)]~~ 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(b) to an overdose outreach provider pursuant to ~~[Subsection 26-55-104(2)(a)(iii)]~~ Section 26B-4-509.

(3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response Act]~~ Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care

in the prescribing, dispensing, or administration of an opiate antagonist.

Section 12. Section **58-37-3.6** is amended to read:

58-37-3.6. Exemption for possession or distribution of a cannabinoid product or expanded cannabinoid product pursuant to an approved study.

(1) As used in this section:

(a) "Cannabinoid product" means a product intended for human ingestion that:

(i) contains an extract or concentrate that is obtained from cannabis;

(ii) is prepared in a medicinal dosage form; and

(iii) contains at least 10 units of cannabidiol for every one unit of tetrahydrocannabinol.

(b) "Cannabis" means any part of the plant cannabis sativa, whether growing or not.

(c) "Drug paraphernalia" means the same as that term is defined in Section **58-37a-3**.

(d) "Expanded cannabinoid product" means a product intended for human ingestion that:

(i) contains an extract or concentrate that is obtained from cannabis;

(ii) is prepared in a medicinal dosage form; and

(iii) contains less than 10 units of cannabidiol for every one unit of tetrahydrocannabinol.

(e) "Medicinal dosage form" means:

(i) a tablet;

(ii) a capsule;

(iii) a concentrated oil;

(iv) a liquid suspension;

(v) a transdermal preparation; or

(vi) a sublingual preparation.

(f) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the description in Subsection **58-37-4(2)(a)(iii)(AA)**.

(2) Notwithstanding any other provision of this chapter an individual who possesses or distributes a cannabinoid product or an expanded cannabinoid product is not subject to the penalties described in this title for the possession or distribution of marijuana or tetrahydrocannabinol to the extent that the individual's possession or distribution of the cannabinoid product or expanded cannabinoid product complies with ~~[Title 26, Chapter 61,~~

~~Cannabinoid Research Act.] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.~~

Section 13. Section ~~58-37-3.7~~ is amended to read:

58-37-3.7. Medical cannabis decriminalization.

(1) As used in this section:

(a) "Cannabis" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(b) "Cannabis product" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(c) "Legal dosage limit" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(d) "Medical cannabis card" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(e) "Medical cannabis device" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(f) "Medicinal dosage form" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(g) "Nonresident patient" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(h) "Qualifying condition" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(i) "Tetrahydrocannabinol" means the same as that term is defined in Section ~~58-37-3.9~~.

(2) Before July 1, 2021, including during the period between January 1, 2021, and March 17, 2021, an individual is not guilty under this chapter for the use or possession of marijuana, tetrahydrocannabinol, or marijuana drug paraphernalia if:

(a) at the time of the arrest or citation, the individual:

(i) for possession, was a medical cannabis cardholder; or

(ii) for use, was a medical cannabis patient cardholder or a minor with a provisional patient card under the supervision of a medical cannabis guardian cardholder; and

(b) (i) for use or possession of marijuana or tetrahydrocannabinol, the marijuana or

925 tetrahydrocannabinol is one of the following in an amount that does not exceed the legal
926 dosage limit:

- 927 (A) unprocessed cannabis in a medicinal dosage form; or
928 (B) a cannabis product in a medicinal dosage form; and
929 (ii) for use or possession of marijuana drug paraphernalia, the paraphernalia is a
930 medical cannabis device.

931 (3) A nonresident patient is not guilty under this chapter for the use or possession of
932 marijuana, tetrahydrocannabinol, or marijuana drug paraphernalia under this chapter if:

- 933 (a) for use or possession of marijuana or tetrahydrocannabinol, the marijuana or
934 tetrahydrocannabinol is one of the following in an amount that does not exceed the legal
935 dosage limit:

- 936 (i) unprocessed cannabis in a medicinal dosage form; or
937 (ii) a cannabis product in a medicinal dosage form; and
938 (b) for use or possession of marijuana drug paraphernalia, the paraphernalia is a
939 medical cannabis device.

940 (4) (a) There is a rebuttable presumption against an allegation of use or possession of
941 marijuana or tetrahydrocannabinol if:

- 942 (i) an individual fails a drug test based on the presence of tetrahydrocannabinol in the
943 sample; and
944 (ii) the individual provides evidence that the individual possessed or used cannabidiol
945 or a cannabidiol product.

946 (b) The presumption described in Subsection (4)(a) may be rebutted with evidence that
947 the individual purchased or possessed marijuana or tetrahydrocannabinol that is not authorized
948 under:

- 949 (i) Section 4-41-402; or
950 (ii) ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2,
951 Cannabinoid Research and Medical Cannabis.

952 (5) (a) An individual is not guilty under this chapter for the use or possession of
953 marijuana drug paraphernalia if the drug paraphernalia is a medical cannabis device.

954 (b) Nothing in this section prohibits a person, either within the state or outside the
955 state, from selling a medical cannabis device within the state.

(c) A person is not required to hold a license under Title 4, Chapter 41a, Cannabis Production Establishments, or [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, to qualify for the protections of this section to sell a medical cannabis device.

Section 14. Section **58-37-3.8** is amended to read:

58-37-3.8. Enforcement.

(1) A law enforcement officer, as that term is defined in Section ~~53-13-103~~, except for an officially designated drug enforcement task force regarding conduct that is not in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, may not expend any state or local resources, including the officer's time, to:

(a) effect any arrest or seizure of cannabis, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of federal law if the officer has reason to believe that the activity is in compliance with the state medical cannabis laws;

(b) enforce a law that restricts an individual's right to acquire, own, or possess a firearm based solely on the individual's possession or use of cannabis in accordance with state medical cannabis laws; or

(c) provide any information or logistical support related to an activity described in Subsection (1)(a) to any federal law enforcement authority or prosecuting entity.

(2) An agency or political subdivision of the state may not take an adverse action against a person for providing a professional service to a medical cannabis pharmacy, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, the state central patient portal, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, or a cannabis production establishment, as that term is defined in Section ~~4-41a-102~~, on the sole basis that the service is a violation of federal law.

Section 15. Section **58-37-3.9** is amended to read:

58-37-3.9. Exemption for possession or use of cannabis to treat a qualifying illness.

(1) As used in this section:

(a) "Cannabis" means marijuana.

(b) "Cannabis product" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(c) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.

(d) "Medical cannabis cardholder" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(e) "Medical cannabis device" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(f) "Medicinal dosage form" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(g) "Tetrahydrocannabinol" means a substance derived from cannabis or a synthetic description as described in Subsection 58-37-4(2)(a)(iii)(AA).

(2) Notwithstanding any other provision of law, except as otherwise provided in this section:

(a) an individual is not guilty of a violation of this title for the following conduct if the individual engages in the conduct in accordance with Title 4, Chapter 41a, Cannabis Production Establishments, or ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis:

(i) possessing, ingesting, inhaling, producing, manufacturing, dispensing, distributing, selling, or offering to sell cannabis or a cannabis product; or

(ii) possessing cannabis or a cannabis product with the intent to engage in the conduct described in Subsection (2)(a)(i); and

(b) an individual is not guilty of a violation of this title regarding drug paraphernalia if the individual, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments, and ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis:

(i) possesses, manufactures, distributes, sells, or offers to sell a medical cannabis device; or

(ii) possesses a medical cannabis device with the intent to engage in any of the conduct described in Subsection (2)(b)(i).

(3) (a) As used in this Subsection (3), "smoking" does not include the vaporization or heating of medical cannabis.

(b) [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, does not authorize a medical cannabis cardholder to smoke or combust cannabis or to use a device to facilitate the smoking or combustion of cannabis.

(c) A medical cannabis cardholder or a nonresident patient who smokes cannabis or engages in any other conduct described in Subsection (3)(b):

(i) does not possess the cannabis in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; and

(ii) is, for the use or possession of marijuana, tetrahydrocannabinol, or marijuana drug paraphernalia for the conduct described in Subsection (3)(b):

(A) for the first offense, guilty of an infraction and subject to a fine of up to \$100; and

(B) for a second or subsequent offense, subject to charges under this chapter.

(4) An individual who is assessed a penalty or convicted of a crime under Title 4, Chapter 41a, Cannabis Production Establishments, or [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, is not, based on the conduct underlying that penalty or conviction, subject to a penalty described in this chapter for:

(a) the possession, manufacture, sale, or offer for sale of cannabis or a cannabis product; or

(b) the possession, manufacture, sale, or offer for sale of drug paraphernalia.

(5) (a) Nothing in this section prohibits a person, either within the state or outside the state, from selling a medical cannabis device within the state.

(b) A person is not required to hold a license under Title 4, Chapter 41a, Cannabis Production Establishments, or [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, to qualify for the protections of this section to sell a medical cannabis device.

Section 16. Section **58-37-6.5** is amended to read:

58-37-6.5. Continuing education for controlled substance prescribers.

(1) For the purposes of this section:

(a) "Controlled substance prescriber" means an individual, other than a veterinarian,

1049 who:

1050 (i) is licensed to prescribe a controlled substance under [~~Title 58, Chapter 37, Utah~~
1051 ~~Controlled Substances Act~~] this chapter; and

1052 (ii) possesses the authority, in accordance with the individual's scope of practice, to
1053 prescribe schedule II controlled substances and schedule III controlled substances that are
1054 applicable to opioid narcotics, hypnotic depressants, or psychostimulants.

1055 (b) "D.O." means an osteopathic physician and surgeon licensed under [~~Title 58,~~]
1056 Chapter 68, Utah Osteopathic Medical Practice Act.

1057 (c) "FDA" means the United States Food and Drug Administration.

1058 (d) "M.D." means a physician and surgeon licensed under [~~Title 58,~~] Chapter 67, Utah
1059 Medical Practice Act.

1060 (e) "SBIRT" means the Screening, Brief Intervention, and Referral to Treatment
1061 approach used by the federal Substance Abuse and Mental Health Services Administration or
1062 defined by the division, in consultation with the [~~Division of Substance Abuse~~] Office of
1063 Substance Use and Mental Health, by administrative rule, in accordance with Title 63G,
1064 Chapter 3, Utah Administrative Rulemaking Act.

1065 (2) (a) Beginning with the licensing period that begins after January 1, 2014, as a
1066 condition precedent for license renewal, each controlled substance prescriber shall complete at
1067 least 3.5 continuing education hours per licensing period that satisfy the requirements of
1068 Subsection (3).

1069 (b) (i) Beginning with the licensing period that begins after January 1, 2024, as a
1070 condition precedent for license renewal, each controlled substance prescriber shall complete at
1071 least 3.5 continuing education hours in an SBIRT-training class that satisfies the requirements
1072 of Subsection (4).

1073 (ii) Completion of the SBIRT-training class, in compliance with Subsection (2)(b)(i),
1074 fulfills the continuing education hours requirement in Subsection (3) for the licensing period in
1075 which the class was completed.

1076 (iii) A controlled substance prescriber:

1077 (A) need only take the SBIRT-training class once during the controlled substance
1078 prescriber's licensure in the state; and

1079 (B) shall provide a completion record of the SBIRT-training class in order to be

reimbursed for SBIRT services to patients, in accordance with Sections ~~[26-18-22]~~ [26B-3-131](#) and [49-20-416](#).

(3) A controlled substance prescriber shall complete at least 3.5 hours of continuing education in one or more controlled substance prescribing classes, except dentists who shall complete at least two hours, that satisfy the requirements of Subsections (4) and (6).

(4) A controlled substance prescribing class shall:

(a) satisfy the division's requirements for the continuing education required for the renewal of the controlled substance prescriber's respective license type;

(b) be delivered by an accredited or approved continuing education provider recognized by the division as offering continuing education appropriate for the controlled substance prescriber's respective license type; and

(c) include a postcourse knowledge assessment.

(5) An M.D. or D.O. completing continuing professional education hours under Subsection (4) shall complete those hours in classes that qualify for the American Medical Association Physician's Recognition Award Category 1 Credit.

(6) The 3.5 hours of the controlled substance prescribing classes under Subsection (4) shall include educational content covering the following:

(a) the scope of the controlled substance abuse problem in Utah and the nation;

(b) all elements of the FDA Blueprint for Prescriber Education under the FDA's Extended-Release and Long-Acting Opioid Analgesics Risk Evaluation and Mitigation Strategy, as published July 9, 2012, or as it may be subsequently revised;

(c) the national and Utah-specific resources available to prescribers to assist in appropriate controlled substance and opioid prescribing;

(d) patient record documentation for controlled substance and opioid prescribing;

(e) office policies, procedures, and implementation; and

(f) some training regarding medical cannabis, as that term is defined in Section ~~[26-61a-102]~~ [26B-4-201](#).

(7) (a) The division, in consultation with the Utah Medical Association Foundation, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections (4) and (6) for an M.D. or D.O.

(b) The division, in consultation with the applicable professional licensing boards,

shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections (4) and (6) for a controlled substance prescriber other than an M.D. or D.O.

(c) The division may by rule establish a committee that may audit compliance with the Utah Risk Evaluation and Mitigation Strategy (REMS) Educational Programming Project grant, that satisfies the educational content requirements of Subsections (4) and (6) for a controlled substance prescriber.

(d) The division shall consult with the Department of ~~Health~~ Health and Human Services regarding the medical cannabis training described in Subsection (6)(f).

(8) A controlled substance prescribing class required under this section:

(a) may be held:

(i) in conjunction with other continuing professional education programs; and

(ii) online; and

(b) does not increase the total number of state-required continuing professional education hours required for prescriber licensing.

(9) The division may establish rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

(10) A controlled substance prescriber who, on or after July 1, 2017, obtains a waiver to treat opioid dependency with narcotic medications, in accordance with the Drug Addiction Treatment Act of 2000, 21 U.S.C. Sec. 823 et seq., may use the waiver to satisfy the 3.5 hours of the continuing education requirement under Subsection (3) for two consecutive licensing periods.

Section 17. Section **58-37-7** is amended to read:

58-37-7. Labeling and packaging controlled substance -- Informational pamphlet for opiates.

(1) A person licensed pursuant to this act may not distribute a controlled substance unless it is packaged and labeled in compliance with the requirements of Section 305 of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(2) No person except a pharmacist for the purpose of filling a prescription shall alter, deface, or remove any label affixed by the manufacturer.

(3) Whenever a pharmacist sells or dispenses any controlled substance on a

prescription issued by a practitioner, the pharmacist shall affix to the container in which the substance is sold or dispensed:

(a) a label showing the:

(i) pharmacy name and address;

(ii) serial number; and

(iii) date of initial filling;

(b) the prescription number, the name of the patient, or if the patient is an animal, the name of the owner of the animal and the species of the animal;

(c) the name of the practitioner by whom the prescription was written;

(d) any directions stated on the prescription; and

(e) any directions required by rules and regulations promulgated by the department.

(4) Whenever a pharmacist sells or dispenses a Schedule II or Schedule III controlled substance that is an opiate, a pharmacist shall affix a warning to the container or the lid for the container in which the substance is sold or dispensed that contains the following text:

(a) "Caution: Opioid. Risk of overdose and addiction"; or

(b) any other language that is approved by the Department of ~~[Health]~~ Health and Human Services.

(5) (a) A pharmacist who sells or dispenses a Schedule II or Schedule III controlled substance that is an opiate shall, if available from the Department of ~~[Health]~~ Health and Human Services, prominently display at the point of sale the informational pamphlet developed by the Department of ~~[Health]~~ Health and Human Services under Section ~~[26-55-109]~~ 26B-4-514.

(b) The board and the Department of ~~[Health]~~ Health and Human Services shall encourage pharmacists to use the informational pamphlet to engage in patient counseling regarding the risks associated with taking opiates.

(c) The requirement in Subsection (5)(a) does not apply to a pharmacist if the pharmacist is unable to obtain the informational pamphlet from the Department of ~~[Health]~~ Health and Human Services for any reason.

(6) A person may not alter the face or remove any label so long as any of the original contents remain.

(7) (a) An individual to whom or for whose use any controlled substance has been

prescribed, sold, or dispensed by a practitioner and the owner of any animal for which any controlled substance has been prescribed, sold, or dispensed by a veterinarian may lawfully possess it only in the container in which it was delivered to the individual by the person selling or dispensing it.

(b) It is a defense to a prosecution under this subsection that the person being prosecuted produces in court a valid prescription for the controlled substance or the original container with the label attached.

Section 18. Section **58-37-8** is amended to read:

58-37-8. Prohibited acts -- Penalties.

(1) Prohibited acts A -- Penalties and reporting:

(a) Except as authorized by this chapter, it is unlawful for a person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct that results in a violation of Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) A person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second

degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than:

(A) seven years and which may be for life; or

(B) 15 years and which may be for life if the trier of fact determined that the defendant knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B) was under 18 years old.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the offense, was under 18 years old.

(e) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (1)(a).

(2) Prohibited acts B -- Penalties and reporting:

(a) It is unlawful:

1235 (i) for a person knowingly and intentionally to possess or use a controlled substance
1236 analog or a controlled substance, unless it was obtained under a valid prescription or order,
1237 directly from a practitioner while acting in the course of the person's professional practice, or as
1238 otherwise authorized by this chapter;

1239 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,
1240 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied
1241 by persons unlawfully possessing, using, or distributing controlled substances in any of those
1242 locations; or

1243 (iii) for a person knowingly and intentionally to possess an altered or forged
1244 prescription or written order for a controlled substance.

1245 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:

1246 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
1247 or

1248 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
1249 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
1250 conviction if each prior offense was committed within seven years before the date of the
1251 offense upon which the current conviction is based is guilty of a third degree felony.

1252 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
1253 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
1254 penalty than provided in this Subsection (2).

1255 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
1256 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
1257 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

1258 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior
1259 offense was committed within seven years before the date of the offense upon which the
1260 current conviction is based.

1261 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony
1262 if each prior offense was committed within seven years before the date of the offense upon
1263 which the current conviction is based.

1264 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior
1265 boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a

public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

(g) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(3) Prohibited acts C -- Penalties:

(a) It is unlawful for a person knowingly and intentionally:

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to a person known to be attempting to acquire or obtain possession of, or to procure the administration of a controlled substance by misrepresentation or failure by the person to disclose receiving a controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a

prescription or written order for a controlled substance, or the use of a false name or address;
(iii) to make a false or forged prescription or written order for a controlled substance,
or to utter the same, or to alter a prescription or written order issued or written under the terms
of this chapter; or

(iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to
print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or
device of another or any likeness of any of the foregoing upon any drug or container or labeling
so as to render a drug a counterfeit controlled substance.

(b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
misdemeanor.

(ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third
degree felony.

(c) A violation of Subsection (3)(a)(iv) is a third degree felony.

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this
chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is
upon conviction subject to the penalties and classifications under this Subsection (4) if the trier
of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of
those schools during the hours of 6 a.m. through 10 p.m.;

(ii) in a public or private vocational school or postsecondary institution or on the
grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

(iii) in or on the grounds of a preschool or child-care facility during the preschool's or
facility's hours of operation;

(iv) in a public park, amusement park, arcade, or recreation center when the public or
amusement park, arcade, or recreation center is open to the public;

(v) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vi) in or on the grounds of a library when the library is open to the public;

(vii) within an area that is within 100 feet of any structure, facility, or grounds included
in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

(viii) in the presence of a person younger than 18 years old, regardless of where the act

occurs; or

(ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of a correctional facility as defined in Section 76-8-311.3.

(b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense.

(d) (i) If the violation is of Subsection (4)(a)(ix):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).

(e) It is not a defense to a prosecution under this Subsection (4) that:

(i) the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age; or

(ii) the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) A violation of this chapter for which no penalty is specified is a class B

1359 misdemeanor.

1360 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
1361 guilty or no contest to a violation or attempted violation of this section or a plea which is held
1362 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
1363 even if the charge has been subsequently reduced or dismissed in accordance with the plea in
1364 abeyance agreement.

1365 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
1366 conviction that is:

1367 (i) from a separate criminal episode than the current charge; and

1368 (ii) from a conviction that is separate from any other conviction used to enhance the
1369 current charge.

1370 (7) A person may be charged and sentenced for a violation of this section,
1371 notwithstanding a charge and sentence for a violation of any other section of this chapter.

1372 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu
1373 of, a civil or administrative penalty or sanction authorized by law.

1374 (b) When a violation of this chapter violates a federal law or the law of another state,
1375 conviction or acquittal under federal law or the law of another state for the same act is a bar to
1376 prosecution in this state.

1377 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a
1378 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
1379 substance or substances, is prima facie evidence that the person or persons did so with
1380 knowledge of the character of the substance or substances.

1381 (10) This section does not prohibit a veterinarian, in good faith and in the course of the
1382 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or
1383 administering controlled substances or from causing the substances to be administered by an
1384 assistant or orderly under the veterinarian's direction and supervision.

1385 (11) Civil or criminal liability may not be imposed under this section on:

1386 (a) a person registered under this chapter who manufactures, distributes, or possesses
1387 an imitation controlled substance for use as a placebo or investigational new drug by a
1388 registered practitioner in the ordinary course of professional practice or research; or

1389 (b) a law enforcement officer acting in the course and legitimate scope of the officer's

employment.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Section 58-37-2.

(b) In a prosecution alleging violation of this section regarding peyote as defined in Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days before trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person was:

(i) engaged in medical research; and

(ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

(a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(b) the substance was administered to the person by the medical researcher.

(15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This

Subsection (15) takes precedence over any conflicting provision of this section.

(16) (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person or bystander:

(i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;

(ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section ~~26-8a-102~~ [26B-4-101](#), a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);

(iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;

(iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;

(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.

(b) The offenses referred to in Subsection (16)(a) are:

(i) the possession or use of less than 16 ounces of marijuana;

(ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and

(iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.

(c) As used in this Subsection (16) and in Section [76-3-203.11](#), "good faith" does not include seeking medical assistance under this section during the course of a law enforcement

agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

(17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

(19) If a minor who is under 18 years old is found by a court to have violated this section or Subsection [76-5-102.1\(2\)\(b\)](#) or [76-5-207\(2\)\(b\)](#), the court may order the minor to complete:

(a) a screening as defined in Section [41-6a-501](#);

(b) an assessment as defined in Section [41-6a-501](#) if the screening indicates an assessment to be appropriate; and

(c) an educational series as defined in Section [41-6a-501](#) or substance use disorder treatment as indicated by an assessment.

Section 19. Section **58-37-19** is amended to read:

58-37-19. Opiate prescription consultation.

(1) As used in this section:

(a) "Hospice" means the same as that term is defined in Section ~~[26-21-2]~~ [26B-2-201](#).

(b) "Initial opiate prescription" means a prescription for an opiate to a patient who:

(i) has never previously been issued a prescription for an opiate; or

(ii) was previously issued a prescription for an opiate, but the date on which the current prescription is being issued is more than one year after the date on which an opiate was previously prescribed or administered to the patient.

(c) "Prescriber" means an individual authorized to prescribe a controlled substance under this chapter.

(2) Except as provided in Subsection (3), a prescriber may not issue an initial opiate prescription without discussing with the patient, or the patient's parent or guardian if the patient is under 18 years ~~[of age]~~ old and is not an emancipated minor:

(a) the risks of addiction and overdose associated with opiate drugs;

(b) the dangers of taking opiates with alcohol, benzodiazepines, and other central nervous system depressants;

- (c) the reasons why the prescription is necessary;
- (d) alternative treatments that may be available; and
- (e) other risks associated with the use of the drugs being prescribed.

(3) This section does not apply to a prescription for:

- (a) a patient who is currently in active treatment for cancer;
- (b) a patient who is receiving hospice care from a licensed hospice; or
- (c) a medication that is being prescribed to a patient for the treatment of the patient's substance abuse or opiate dependence.

Section 20. Section **58-37-22** is amended to read:

58-37-22. Electronic prescriptions for controlled substances.

(1) Beginning January 1, 2022, each prescription issued for a controlled substance shall be transmitted electronically as an electronic prescription unless the prescription is:

(a) for a patient residing in an assisted living facility as that term is defined in Section ~~[26-21-2]~~ [26B-2-201](#), a long-term care facility as that term is defined in Section [58-31b-102](#), or a correctional facility as that term is defined in Section [64-13-1](#);

(b) issued by a veterinarian licensed under ~~[Title 58,]~~ Chapter 28, Veterinary Practice Act;

(c) dispensed by a Department of Veterans Affairs pharmacy;

(d) issued during a temporary technical or electronic failure at the practitioner's or pharmacy's location; or

(e) issued in an emergency situation.

(2) The division, in collaboration with the appropriate boards that govern the licensure of the licensees who are authorized by the division to prescribe or to dispense controlled substances, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) require that controlled substances prescribed or dispensed under Subsection (1)(d) indicate on the prescription that the prescribing practitioner or the pharmacy is experiencing a technical difficulty or an electronic failure;

(b) define an emergency situation for purposes of Subsection (1)(e);

(c) establish additional exemptions to the electronic prescription requirements established in this section;

(d) establish guidelines under which a prescribing practitioner or a pharmacy may obtain an extension of up to two additional years to comply with Subsection (1);

(e) establish a protocol to follow if the pharmacy that receives the electronic prescription is not able to fill the prescription; and

(f) establish requirements that comply with federal laws and regulations for software used to issue and dispense electronic prescriptions.

(3) Beginning July 1, 2024, a pharmacy software program for receiving an electronic prescription for a controlled substance shall be capable of electronically transferring a prescription to a different pharmacy:

(a) upon the request of the patient or the practitioner;

(b) with the approval of a pharmacist at the originating pharmacy; and

(c) if the prescription is unfilled.

Section 21. Section **58-37f-102** is amended to read:

58-37f-102. Definitions.

(1) The definitions in Section [58-37-2](#) apply to this chapter.

(2) As used in this chapter:

(a) "Board" means the Utah State Board of Pharmacy created in Section [58-17b-201](#).

(b) "Business associate" is as defined under the HIPAA privacy, security, and breach notification rules in 45 C.F.R. 164.502(a), 164.504(e), and 164.532(d) and (e).

(c) "Database" means the controlled substance database created in Section [58-37f-201](#).

(d) "De-identified" is as defined in 45 C.F.R. 164.502(d) and 164.514(a), (b), and (c).

(e) "Health care facility" is as defined in Section ~~[26-21-2]~~ [26B-2-201](#).

(f) "Mental health therapist" is as defined in Section [58-60-102](#).

(g) "Pharmacy" or "pharmaceutical facility" is as defined in Section [58-17b-102](#).

(h) "Prospective patient" means an individual who:

(i) is seeking medical advice, medical treatment, or medical services from a practitioner; and

(ii) the practitioner described in Subsection (2)(h)(i) is considering accepting as a patient.

(i) "Substance abuse treatment program" is as defined in Section ~~[62A-2-101]~~ [26B-2-101](#).

Section 22. Section **58-37f-201** is amended to read:

58-37f-201. Controlled substance database -- Creation -- Purpose.

(1) There is created within the division a controlled substance database.

(2) The division shall administer and direct the functioning of the database in accordance with this chapter.

(3) The division may, under state procurement laws, contract with another state agency or a private entity to establish, operate, or maintain the database.

(4) The division shall, in collaboration with the board, determine whether to operate the database within the division or contract with another entity to operate the database, based on an analysis of costs and benefits.

(5) The purpose of the database is to contain:

(a) the data described in Section [58-37f-203](#) regarding prescriptions for dispensed controlled substances;

(b) data reported to the division under Section [\[26-21-26\]](#) [26B-2-225](#) regarding poisoning or overdose;

(c) data reported to the division under Subsection [41-6a-502](#)(4) or [41-6a-502.5](#)(5)(b) regarding convictions for driving under the influence of a prescribed controlled substance or impaired driving; and

(d) data reported to the division under Subsection [58-37-8](#)(1)(e) or [58-37-8](#)(2)(g) regarding certain violations of ~~the~~ Chapter 37, Utah Controlled Substances Act.

(6) The division shall maintain the database in an electronic file or by other means established by the division to facilitate use of the database for identification of:

(a) prescribing practices and patterns of prescribing and dispensing controlled substances;

(b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;

(c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance;

(d) individuals presenting forged or otherwise false or altered prescriptions for

1576 controlled substances to a pharmacy;

1577 (e) individuals admitted to a general acute hospital for poisoning or overdose involving
1578 a prescribed controlled substance; and

1579 (f) individuals convicted for:

1580 (i) driving under the influence of a prescribed controlled substance that renders the
1581 individual incapable of safely operating a vehicle;

1582 (ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or

1583 (iii) certain violations of ~~[the]~~ Chapter 37, Utah Controlled Substances Act.

1584 Section 23. Section **58-37f-301** is amended to read:

1585 **58-37f-301. Access to database.**

1586 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
1587 Administrative Rulemaking Act, to:

1588 (a) effectively enforce the limitations on access to the database as described in this
1589 part; and

1590 (b) establish standards and procedures to ensure accurate identification of individuals
1591 requesting information or receiving information without request from the database.

1592 (2) The division shall make information in the database and information obtained from
1593 other state or federal prescription monitoring programs by means of the database available only
1594 to the following individuals, in accordance with the requirements of this chapter and division
1595 rules:

1596 (a) (i) personnel of the division specifically assigned to conduct investigations related
1597 to controlled substance laws under the jurisdiction of the division; and

1598 (ii) the following law enforcement officers, but the division may only provide
1599 nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding
1600 individuals for whom a controlled substance has been prescribed or to whom a controlled
1601 substance has been dispensed:

1602 (A) a law enforcement agency officer who is engaged in a joint investigation with the
1603 division; and

1604 (B) a law enforcement agency officer to whom the division has referred a suspected
1605 criminal violation of controlled substance laws;

1606 (b) authorized division personnel engaged in analysis of controlled substance

prescription information as a part of the assigned duties and responsibilities of their employment;

(c) a board member if:

(i) the board member is assigned to monitor a licensee on probation; and

(ii) the board member is limited to obtaining information from the database regarding the specific licensee on probation;

(d) a person the division authorizes to obtain that information on behalf of the Utah Professionals Health Program established in Subsection 58-4a-103(1) if:

(i) the person the division authorizes is limited to obtaining information from the database regarding the person whose conduct is the subject of the division's consideration; and

(ii) the conduct that is the subject of the division's consideration includes a violation or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant violation or potential violation under this title;

(e) in accordance with a written agreement entered into with the department, employees of the Department of ~~[Health]~~ Health and Human Services:

(i) whom the director of the Department of ~~[Health]~~ Health and Human Services assigns to conduct scientific studies regarding the use or abuse of controlled substances, if the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies;

(ii) when the information is requested by the Department of ~~[Health]~~ Health and Human Services in relation to a person or provider whom the Department of ~~[Health]~~ Health and Human Services suspects may be improperly obtaining or providing a controlled substance; or

(iii) in the medical examiner's office;

(f) in accordance with a written agreement entered into with the department, a designee of the director of the Department of ~~[Health]~~ Health and Human Services, who is not an employee of the Department of ~~[Health]~~ Health and Human Services, whom the director of the Department of ~~[Health]~~ Health and Human Services assigns to conduct scientific studies regarding the use or abuse of controlled substances pursuant to an application process established in rule by the Department of ~~[Health]~~ Health and Human Services, if:

(i) the designee provides explicit information to the Department of ~~[Health]~~ Health and

1638 Human Services regarding the purpose of the scientific studies;
1639 (ii) the scientific studies to be conducted by the designee:
1640 (A) fit within the responsibilities of the Department of ~~[Health]~~ Health and Human
1641 Services for health and welfare;
1642 (B) are reviewed and approved by an Institutional Review Board that is approved for
1643 human subject research by the United States Department of Health and Human Services;
1644 (C) are not conducted for profit or commercial gain; and
1645 (D) are conducted in a research facility, as defined by division rule, that is associated
1646 with a university or college accredited by one or more regional or national accrediting agencies
1647 recognized by the United States Department of Education;
1648 (iii) the designee protects the information as a business associate of the Department of
1649 ~~[Health]~~ Health and Human Services; and
1650 (iv) the identity of the prescribers, patients, and pharmacies in the database are
1651 de-identified, confidential, and not disclosed in any manner to the designee or to any individual
1652 who is not directly involved in the scientific studies;
1653 (g) in accordance with a written agreement entered into with the department and the
1654 Department of ~~[Health]~~ Health and Human Services, authorized employees of a managed care
1655 organization, as defined in 42 C.F.R. Sec. 438, if:
1656 (i) the managed care organization contracts with the Department of ~~[Health]~~ Health and
1657 Human Services under the provisions of Section ~~[26-18-405]~~ 26B-3-202 and the contract
1658 includes provisions that:
1659 (A) require a managed care organization employee who will have access to information
1660 from the database to submit to a criminal background check; and
1661 (B) limit the authorized employee of the managed care organization to requesting
1662 either the division or the Department of ~~[Health]~~ Health and Human Services to conduct a
1663 search of the database regarding a specific Medicaid enrollee and to report the results of the
1664 search to the authorized employee; and
1665 (ii) the information is requested by an authorized employee of the managed care
1666 organization in relation to a person who is enrolled in the Medicaid program with the managed
1667 care organization, and the managed care organization suspects the person may be improperly
1668 obtaining or providing a controlled substance;

1669 (h) a licensed practitioner having authority to prescribe controlled substances, to the
1670 extent the information:

1671 (i) (A) relates specifically to a current or prospective patient of the practitioner; and

1672 (B) is provided to or sought by the practitioner for the purpose of:

1673 (I) prescribing or considering prescribing any controlled substance to the current or
1674 prospective patient;

1675 (II) diagnosing the current or prospective patient;

1676 (III) providing medical treatment or medical advice to the current or prospective
1677 patient; or

1678 (IV) determining whether the current or prospective patient:

1679 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

1680 or

1681 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
1682 substance from the practitioner;

1683 (ii) (A) relates specifically to a former patient of the practitioner; and

1684 (B) is provided to or sought by the practitioner for the purpose of determining whether
1685 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
1686 controlled substance from the practitioner;

1687 (iii) relates specifically to an individual who has access to the practitioner's Drug
1688 Enforcement Administration identification number, and the practitioner suspects that the
1689 individual may have used the practitioner's Drug Enforcement Administration identification
1690 number to fraudulently acquire or prescribe a controlled substance;

1691 (iv) relates to the practitioner's own prescribing practices, except when specifically
1692 prohibited by the division by administrative rule;

1693 (v) relates to the use of the controlled substance database by an employee of the
1694 practitioner, described in Subsection (2)(i); or

1695 (vi) relates to any use of the practitioner's Drug Enforcement Administration
1696 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
1697 controlled substance;

1698 (i) in accordance with Subsection (3)(a), an employee of a practitioner described in
1699 Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

1700 (i) the employee is designated by the practitioner as an individual authorized to access
1701 the information on behalf of the practitioner;

1702 (ii) the practitioner provides written notice to the division of the identity of the
1703 employee; and

1704 (iii) the division:

1705 (A) grants the employee access to the database; and

1706 (B) provides the employee with a password that is unique to that employee to access
1707 the database in order to permit the division to comply with the requirements of Subsection

1708 [58-37f-203](#)(7) with respect to the employee;

1709 (j) an employee of the same business that employs a licensed practitioner under
1710 Subsection (2)(h) if:

1711 (i) the employee is designated by the practitioner as an individual authorized to access
1712 the information on behalf of the practitioner;

1713 (ii) the practitioner and the employing business provide written notice to the division of
1714 the identity of the designated employee; and

1715 (iii) the division:

1716 (A) grants the employee access to the database; and

1717 (B) provides the employee with a password that is unique to that employee to access
1718 the database in order to permit the division to comply with the requirements of Subsection

1719 [58-37f-203](#)(7) with respect to the employee;

1720 (k) a licensed pharmacist having authority to dispense a controlled substance, or a
1721 licensed pharmacy intern or pharmacy technician working under the general supervision of a
1722 licensed pharmacist, to the extent the information is provided or sought for the purpose of:

1723 (i) dispensing or considering dispensing any controlled substance;

1724 (ii) determining whether a person:

1725 (A) is attempting to fraudulently obtain a controlled substance from the pharmacy,
1726 practitioner, or health care facility; or

1727 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
1728 substance from the pharmacy, practitioner, or health care facility;

1729 (iii) reporting to the controlled substance database; or

1730 (iv) verifying the accuracy of the data submitted to the controlled substance database

1731 on behalf of a pharmacy where the licensed pharmacist, pharmacy intern, or pharmacy
1732 technician is employed;

1733 (l) pursuant to a valid search warrant, federal, state, and local law enforcement officers
1734 and state and local prosecutors who are engaged in an investigation related to:

1735 (i) one or more controlled substances; and
1736 (ii) a specific person who is a subject of the investigation;

1737 (m) subject to Subsection (7), a probation or parole officer, employed by the
1738 Department of Corrections or by a political subdivision, to gain access to database information
1739 necessary for the officer's supervision of a specific probationer or parolee who is under the
1740 officer's direct supervision;

1741 (n) employees of the Office of Internal Audit [~~and Program Integrity~~] within the
1742 Department of [~~Health~~] Health and Human Services who are engaged in their specified duty of
1743 ensuring Medicaid program integrity under Section [~~26-18-2.3~~] 26B-3-104;

1744 (o) a mental health therapist, if:

1745 (i) the information relates to a patient who is:

1746 (A) enrolled in a licensed substance abuse treatment program; and
1747 (B) receiving treatment from, or under the direction of, the mental health therapist as
1748 part of the patient's participation in the licensed substance abuse treatment program described
1749 in Subsection (2)(o)(i)(A);

1750 (ii) the information is sought for the purpose of determining whether the patient is
1751 using a controlled substance while the patient is enrolled in the licensed substance abuse
1752 treatment program described in Subsection (2)(o)(i)(A); and

1753 (iii) the licensed substance abuse treatment program described in Subsection
1754 (2)(o)(i)(A) is associated with a practitioner who:

1755 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
1756 pharmacist; and

1757 (B) is available to consult with the mental health therapist regarding the information
1758 obtained by the mental health therapist, under this Subsection (2)(o), from the database;

1759 (p) an individual who is the recipient of a controlled substance prescription entered into
1760 the database, upon providing evidence satisfactory to the division that the individual requesting
1761 the information is in fact the individual about whom the data entry was made;

(q) an individual under Subsection (2)(p) for the purpose of obtaining a list of the persons and entities that have requested or received any information from the database regarding the individual, except if the individual's record is subject to a pending or current investigation as authorized under this Subsection (2);

(r) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title 63A, Chapter 13, Part 2, Office and Powers;

(s) the following licensed physicians for the purpose of reviewing and offering an opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

(i) a member of the medical panel described in Section 34A-2-601;

(ii) a physician employed as medical director for a licensed workers' compensation insurer or an approved self-insured employer; or

(iii) a physician offering a second opinion regarding treatment;

(t) members of Utah's Opioid Fatality Review Committee, for the purpose of reviewing a specific fatality due to opioid use and recommending policies to reduce the frequency of opioid use fatalities;

(u) a licensed pharmacist who is authorized by a managed care organization as defined in Section 31A-1-301 to access the information on behalf of the managed care organization, if:

(i) the managed care organization believes that an enrollee of the managed care organization has obtained or provided a controlled substance in violation of a medication management program contract between the enrollee and the managed care organization; and

(ii) the managed care organization included a description of the medication management program in the enrollee's outline of coverage described in Subsection 31A-22-605(7); and

(v) the Utah Medicaid Fraud Control Unit of the attorney general's office for the purpose of investigating active cases, in exercising the unit's authority to investigate and prosecute Medicaid fraud, abuse, neglect, or exploitation under 42 U.S.C. Sec. 1396b(q).

(3) (a) A practitioner described in Subsection (2)(h) may designate one or more employees to access information from the database under Subsection (2)(i), (2)(j), or (4)(c).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

1793 Administrative Rulemaking Act, to:

1794 (i) establish background check procedures to determine whether an employee
1795 designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database;

1796 (ii) establish the information to be provided by an emergency department employee
1797 under Subsection (4); and

1798 (iii) facilitate providing controlled substance prescription information to a third party
1799 under Subsection (5).

1800 (c) The division shall grant an employee designated under Subsection (2)(i), (2)(j), or
1801 (4)(c) access to the database, unless the division determines, based on a background check, that
1802 the employee poses a security risk to the information contained in the database.

1803 (4) (a) An individual who is employed in the emergency department of a hospital may
1804 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
1805 the individual is designated under Subsection (4)(c) and the licensed practitioner:

1806 (i) is employed or privileged to work in the emergency department;

1807 (ii) is treating an emergency department patient for an emergency medical condition;

1808 and

1809 (iii) requests that an individual employed in the emergency department and designated
1810 under Subsection (4)(c) obtain information regarding the patient from the database as needed in
1811 the course of treatment.

1812 (b) The emergency department employee obtaining information from the database
1813 shall, when gaining access to the database, provide to the database the name and any additional
1814 identifiers regarding the requesting practitioner as required by division administrative rule
1815 established under Subsection (3)(b).

1816 (c) An individual employed in the emergency department under this Subsection (4)
1817 may obtain information from the database as provided in Subsection (4)(a) if:

1818 (i) the employee is designated by the hospital as an individual authorized to access the
1819 information on behalf of the emergency department practitioner;

1820 (ii) the hospital operating the emergency department provide written notice to the
1821 division of the identity of the designated employee; and

1822 (iii) the division:

1823 (A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(i), (2)(j), or (4)(c) to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(5) (a) (i) An individual may request that the division provide the information under Subsection (5)(b) to a third party who is designated by the individual each time a controlled substance prescription for the individual is dispensed.

(ii) The division shall upon receipt of the request under this Subsection (5)(a) advise the individual in writing that the individual may direct the division to discontinue providing the information to a third party and that notice of the individual's direction to discontinue will be provided to the third party.

(b) The information the division shall provide under Subsection (5)(a) is:

(i) the fact a controlled substance has been dispensed to the individual, but without identifying the controlled substance; and

(ii) the date the controlled substance was dispensed.

(c) (i) An individual who has made a request under Subsection (5)(a) may direct that the division discontinue providing information to the third party.

(ii) The division shall:

(A) notify the third party that the individual has directed the division to no longer provide information to the third party; and

(B) discontinue providing information to the third party.

(6) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

(7) A probation or parole officer is not required to obtain a search warrant to access the database in accordance with Subsection (2)(m).

(8) The division shall review and adjust the database programming which automatically logs off an individual who is granted access to the database under Subsections (2)(h), (2)(i), (2)(j), and (4)(c) to maximize the following objectives:

- (a) to protect patient privacy;
- (b) to reduce inappropriate access; and
- (c) to make the database more useful and helpful to a person accessing the database under Subsections (2)(h), (2)(i), (2)(j), and (4)(c), especially in high usage locations such as an emergency department.

(9) Any person who knowingly and intentionally accesses the database without express authorization under this section is guilty of a class A misdemeanor.

Section 24. Section **58-37f-702** is amended to read:

58-37f-702. Reporting prescribed controlled substance poisoning or overdose to a practitioner.

(1) (a) The division shall take the actions described in Subsection (1)(b) if the division receives a report from a general acute hospital under Section ~~[26-21-26]~~ 26B-2-225 regarding admission to a general acute hospital for poisoning or overdose involving a prescribed controlled substance.

(b) The division shall, within three business days after the day on which a report in Subsection (1)(a) is received:

(i) attempt to identify, through the database, each practitioner who may have prescribed the controlled substance to the patient; and

(ii) provide each practitioner identified under Subsection ~~[(1)(a)]~~ (1)(b)(i) with:

(A) a copy of the report provided by the general acute hospital under Section ~~[26-21-26]~~ 26B-2-225; and

(B) the information obtained from the database that led the division to determine that the practitioner receiving the information may have prescribed the controlled substance to the person named in the report.

(2) (a) When the division receives a report from the medical examiner under Section ~~[26-4-10.5]~~ 26B-8-210 regarding a death caused by poisoning or overdose involving a prescribed controlled substance, for each practitioner identified by the medical examiner under Subsection ~~[26-4-10.5(1)(c)]~~ 26B-8-210(1)(c), the division:

- 1886 (i) shall, within five business days after the day on which the division receives the
1887 report, provide the practitioner with a copy of the report; and
- 1888 (ii) may offer the practitioner an educational visit to review the report.
- 1889 (b) A practitioner may decline an educational visit described in Subsection (2)(a)(ii).
- 1890 (c) The division may not use, in a licensing investigation or action by the division:
- 1891 (i) information from an educational visit described in Subsection (2)(a)(ii); or
- 1892 (ii) a practitioner's decision to decline an educational visit described in Subsection
1893 (2)(a)(ii).
- 1894 (3) It is the intent of the Legislature that the information provided under Subsection (1)
1895 or (2) is provided for the purpose of assisting the practitioner in:
- 1896 (a) discussing with the patient or others issues relating to the poisoning or overdose;
- 1897 (b) advising the patient or others of measures that may be taken to avoid a future
1898 poisoning or overdose; and
- 1899 (c) making decisions regarding future prescriptions written for the patient or others.
- 1900 (4) Any record created by the division as a result of an educational visit described in
1901 Subsection (2)(a)(ii) is a protected record for purposes of Title 63G, Chapter 2, Government
1902 Records Access and Management Act.
- 1903 (5) Beginning on July 1, 2010, the division shall, in accordance with Section
1904 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup
1905 and ongoing costs of the division for complying with the requirements of this section.
- 1906 Section 25. Section 58-41-4 is amended to read:
- 1907 **58-41-4. Exemptions from chapter.**
- 1908 (1) In addition to the exemptions from licensure in Section 58-1-307, the following
1909 persons may engage in the practice of speech-language pathology and audiology subject to the
1910 stated circumstances and limitations without being licensed under this chapter:
- 1911 (a) a qualified person licensed in this state under any law existing in this state prior to
1912 May 13, 1975, engaging in the profession for which the person is licensed;
- 1913 (b) a medical doctor, physician, physician assistant, or surgeon licensed in this state,
1914 engaging in his or her specialty in the practice of medicine;
- 1915 (c) a hearing aid dealer or salesperson selling, fitting, adjusting, and repairing hearing
1916 aids, and conducting hearing tests solely for that purpose. However, a hearing aid dealer may

1917 not conduct audiologic testing on persons younger than 18 years old except under the direct
1918 supervision of an audiologist licensed under this chapter;

1919 (d) a person who has obtained a valid and current credential issued by the State Board
1920 of Education while specifically performing the functions of a speech-language pathologist or
1921 audiologist solely within the confines of, under the direction and jurisdiction of, and in the
1922 academic interest of the school employing the person;

1923 (e) a person employed as a speech-language pathologist or audiologist by federal
1924 government agencies or subdivisions or, prior to July 1, 1989, by state or local government
1925 agencies or subdivisions, while specifically performing speech-language pathology or
1926 audiology services solely within the confines of, under the direction and jurisdiction of, and in
1927 the specific interest of the agency or subdivision;

1928 (f) a person identified in Subsections (1)(d) and (e) may offer lectures for a fee, or
1929 monetary or other compensation, without being licensed;

1930 (g) a person employed by an accredited college or university as a speech-language
1931 pathologist or audiologist performing the services or functions described in this chapter if the
1932 services or functions are:

1933 (i) performed solely as an assigned teaching function of the person's employment;
1934 (ii) solely in academic interest and pursuit as a function of the person's employment;
1935 (iii) in no way for the person's own interest; and
1936 (iv) provided for no fee, monetary or otherwise, other than the person's agreed
1937 institutional salary;

1938 (h) a person pursuing a course of study leading to a degree in speech-language
1939 pathology or audiology while enrolled in an accredited college or university, provided:

1940 (i) those activities constitute an assigned, directed, and supervised part of the person's
1941 curricular study, and in no other interest;

1942 (ii) that all examinations, tests, histories, charts, progress notes, reports,
1943 correspondence, documents, and records the person produces be identified clearly as having
1944 been conducted and prepared by a student in training;

1945 (iii) that the person is obviously identified and designated by appropriate title clearly
1946 indicating the person's training status; and
1947 (iv) that the person does not hold out directly or indirectly to the public or otherwise

1948 represent that the person is qualified to practice independently;

1949 (i) a person trained in elementary audiometry and qualified to perform basic

1950 audiometric tests while employed by and under the direct supervision of a licensed medical

1951 doctor to perform solely for the licensed medical doctor, the elementary conventional

1952 audiometric tests of air conduction screening, air conduction threshold testing, and

1953 tympanometry;

1954 (j) a person performing the functions of a speech-language pathologist or audiologist

1955 for the sole purpose of obtaining required professional experience under the provisions of this

1956 chapter and only during the period the person is obtaining the required professional experience,

1957 if the person:

1958 (i) meets all training requirements; and

1959 (ii) is professionally responsible to and under the supervision of a speech-language

1960 pathologist or audiologist who holds the CCC or a state license in speech-language pathology

1961 or audiology;

1962 (k) a corporation, partnership, trust, association, group practice, or similar organization

1963 engaging in speech-language pathology or audiology services without certification or license, if

1964 acting only through employees or consisting only of persons who are licensed under this

1965 chapter;

1966 (l) a person who is not a resident of this state performing speech-language pathology or

1967 audiology services in this state if:

1968 (i) the services are performed for no more than one month in any calendar year in

1969 association with a speech-language pathologist or audiologist licensed under this chapter; and

1970 (ii) the person meets the qualifications and requirements for application for licensure

1971 described in Section [58-41-5](#);

1972 (m) a person certified under Title 53E, Public Education System -- State

1973 Administration, as a teacher of the deaf, from providing the services or performing the

1974 functions the person is certified to perform; and

1975 (n) a person who is:

1976 (i) trained in newborn hearing screening as described in rules made by the Department

1977 of Health and Human Services in accordance with Title 63G, Chapter 3, Utah Administrative

1978 Rulemaking Act; and

(ii) is working under the indirect supervision of a licensed audiologist responsible for a newborn hearing screening program established by the Department of Health and Human Services under Section ~~[26-10-6]~~ [26B-4-319](#).

(2) No person is exempt from the requirements of this chapter who performs or provides any services as a speech-language pathologist or audiologist for which a fee, salary, bonus, gratuity, or compensation of any kind paid by the recipient of the service; or who engages any part of his professional work for a fee practicing in conjunction with, by permission of, or apart from his position of employment as speech-language pathologist or audiologist in any branch or subdivision of local, state, or federal government or as otherwise identified in this section.

Section 26. Section ~~58-57-7~~ is amended to read:

~~58-57-7~~. Exemptions from licensure.

(1) (a) For purposes of Subsection (2)(b), "qualified" means an individual who is a registered polysomnographic technologist or a Diplomate certified by the American Board of Sleep Medicine.

(b) For purposes of Subsections (2)(f) and (g), "supervision" means one of the following will be immediately available for consultation in person or by phone:

(i) a practitioner;

(ii) a respiratory therapist;

(iii) a Diplomate of the American Board of Sleep Medicine; or

(iv) a registered polysomnographic technologist.

(2) In addition to the exemptions from licensure in Section ~~58-1-307~~, the following persons may engage in the practice of respiratory therapy subject to the stated circumstances and limitations without being licensed under this chapter:

(a) any person who provides gratuitous care for a member of his immediate family without representing himself as a licensed respiratory care practitioner;

(b) any person who is a licensed or qualified member of another health care profession, if this practice is consistent with the accepted standards of the profession and if the person does not represent himself as a respiratory care practitioner;

(c) any person who serves in the Armed Forces of the United States or any other agency of the federal government and is engaged in the performance of his official duties;

(d) any person who acts under a certification issued pursuant to [~~Title 26, Chapter 8a, Utah Emergency Medical Services System Act~~] Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, while providing emergency medical services;

(e) any person who delivers, installs, or maintains respiratory related durable medical equipment and who gives instructions regarding the use of that equipment in accordance with Subsections ~~58-57-2~~(3) and (6), except that this exemption does not include any clinical evaluation or treatment of the patient;

(f) any person who is working in a practitioner's office, acting under supervision; and

(g) a polysomnographic technician or trainee, acting under supervision, as long as the technician or trainee administers the following only in a sleep lab, sleep center, or sleep facility:

(i) oxygen titration; and

(ii) positive airway pressure that does not include mechanical ventilation.

(3) Nothing in this chapter permits a respiratory care practitioner to engage in the unauthorized practice of other health disciplines.

Section 27. Section ~~58-60-114~~ is amended to read:

~~58-60-114. Confidentiality -- Exemptions.~~

(1) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, a mental health therapist under this chapter may not disclose any confidential communication with a client or patient without the express written consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

(c) a person authorized to consent to the disclosure of the confidential communication by the client or patient in a written document:

(i) that is signed by the client or the patient; and

(ii) in which the client's or the patient's signature is reasonably verifiable.

(2) A mental health therapist under this chapter is not subject to Subsection (1) if:

(a) the mental health therapist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under [~~Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult~~] Title 26B, Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a

2041 Vulnerable Adult;

2042 (ii) reporting under Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;

2043 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to

2044 Warn; or

2045 (iv) reporting of a communicable disease as required under Section [26-6-6]

2046 26B-7-206;

2047 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
2048 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

2049 (c) the disclosure is made under a generally recognized professional or ethical standard
2050 that authorizes or requires the disclosure.

2051 Section 28. Section **58-60-509** is amended to read:

2052 **58-60-509. Confidentiality -- Exemptions.**

2053 (1) A licensee under this part may not disclose any confidential communication with a
2054 client or patient without the express consent of:

2055 (a) the client or patient;

2056 (b) the parent or legal guardian of a minor client or patient; or

2057 (c) the authorized agent of a client or patient.

2058 (2) A licensee under this part is not subject to Subsection (1) if:

2059 (a) the licensee is permitted or required by state or federal law, rule, regulation, or
2060 order to report or disclose any confidential communication, including:

2061 (i) reporting under [~~Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a~~
2062 ~~Vulnerable Adult~~] Title 26B, Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a
2063 Vulnerable Adult;

2064 (ii) reporting under Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;

2065 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to

2066 Warn; or

2067 (iv) reporting of a communicable disease as required under Section [26-6-6]

2068 26B-7-206;

2069 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
2070 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

2071 (c) the disclosure is made under a generally recognized professional or ethical standard

that authorizes or requires the disclosure.

Section 29. Section **58-61-602** is amended to read:

58-61-602. Confidentiality -- Exemptions.

(1) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, a psychologist under this chapter may not disclose any confidential communication with a client or patient without the express written consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

(c) a person authorized to consent to the disclosure of the confidential communication by the client or patient in a written document:

(i) that is signed by the client or the patient; and

(ii) in which the client's or the patient's signature is reasonably verifiable.

(2) A psychologist under this chapter is not subject to Subsection (1) if:

(a) the psychologist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under [~~Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult~~] Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;

(ii) reporting under [~~Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements~~] Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section [~~26-6-6~~] 26B-7-206;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 30. Section **58-61-704** is amended to read:

58-61-704. Term of license or registration.

(1) (a) The division shall issue each license under this part with a two-year renewal cycle established by division rule.

2103 (b) The division may by rule extend or shorten a renewal cycle by as much as one year
2104 to stagger the renewal cycles it administers.

2105 (2) At the time of renewal, the licensed individual shall show satisfactory evidence of
2106 renewal requirements as required under this part.

2107 (3) Each license or registration expires on the expiration date shown on the license
2108 unless renewed by the licensed individual in accordance with Section 58-1-308.

2109 (4) (a) A registration as a registered behavior specialist or a registered assistant
2110 behavior specialist:

2111 (i) expires on the day the individual is no longer employed in accordance with
2112 Subsection 58-61-705(5)(d) or (6)(d); and

2113 (ii) may not be renewed.

2114 (b) The Department of [~~Human Services~~] Health and Human Services, or an
2115 organization contracted with a division of the Department of [~~Human Services~~] Health and
2116 Human Services, shall notify the Division of Professional Licensing when a person registered
2117 under this part is no longer employed as a registered behavior specialist or a registered assistant
2118 behavior specialist.

2119 Section 31. Section 58-61-713 is amended to read:

2120 **58-61-713. Confidentiality -- Exemptions.**

2121 (1) A behavior analyst or behavior specialist under this chapter may not disclose any
2122 confidential communication with a client or patient without the express written consent of:

2123 (a) the client or patient;

2124 (b) the parent or legal guardian of a minor client or patient; or

2125 (c) a person authorized to consent to the disclosure of the confidential communication
2126 by the client or patient in a written document:

2127 (i) that is signed by the client or the patient; and

2128 (ii) in which the client's or the patient's signature is reasonably verifiable.

2129 (2) A behavior analyst or behavior specialist is not subject to Subsection (1) if:

2130 (a) the behavior analyst or behavior specialist is permitted or required by state or
2131 federal law, rule, regulation, or order to report or disclose any confidential communication,
2132 including:

2133 (i) reporting under [~~Title 62A, Chapter 3, Part 3~~] Title 26B, Chapter 6, Part 2, Abuse,

2134 Neglect, or Exploitation of a Vulnerable Adult;
2135 (ii) reporting under Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;
2136 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to
2137 Warn; or
2138 (iv) reporting of a communicable disease as required under Section ~~26-6-6~~
2139 26B-7-206;
2140 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
2141 under an exemption from evidentiary privilege under Utah Rules of Evidence, Rule 506; or
2142 (c) the disclosure is made under a generally recognized professional or ethical standard
2143 that authorizes or requires the disclosure.
2144 Section 32. Section **58-67-302** is amended to read:
2145 **58-67-302. Qualifications for licensure.**
2146 (1) An applicant for licensure as a physician and surgeon, except as set forth in
2147 Subsection (2), shall:
2148 (a) submit an application in a form prescribed by the division, which may include:
2149 (i) submissions by the applicant of information maintained by practitioner data banks,
2150 as designated by division rule, with respect to the applicant;
2151 (ii) a record of professional liability claims made against the applicant and settlements
2152 paid by or on behalf of the applicant; and
2153 (iii) authorization to use a record coordination and verification service approved by the
2154 division in collaboration with the board;
2155 (b) pay a fee determined by the department under Section 63J-1-504;
2156 (c) if the applicant is applying to participate in the Interstate Medical Licensure
2157 Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal
2158 background check in accordance with Section 58-67-302.1 and any requirements established by
2159 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
2160 (d) provide satisfactory documentation of having successfully completed a program of
2161 professional education preparing an individual as a physician and surgeon, as evidenced by:
2162 (i) having received an earned degree of doctor of medicine from an LCME accredited
2163 medical school or college; or
2164 (ii) if the applicant graduated from a medical school or college located outside the

2165 United States or its territories, submitting a current certification by the Educational
2166 Commission for Foreign Medical Graduates or any successor organization approved by the
2167 division in collaboration with the board;

2168 (e) satisfy the division and board that the applicant:

2169 (i) has successfully completed 24 months of progressive resident training in a program
2170 approved by the ACGME, the Royal College of Physicians and Surgeons, the College of
2171 Family Physicians of Canada, or any similar body in the United States or Canada approved by
2172 the division in collaboration with the board; or

2173 (ii) (A) has successfully completed 12 months of resident training in an ACGME
2174 approved program after receiving a degree of doctor of medicine as required under Subsection
2175 (1)(d);

2176 (B) has been accepted in and is successfully participating in progressive resident
2177 training in an ACGME approved program within Utah, in the applicant's second or third year
2178 of postgraduate training; and

2179 (C) has agreed to surrender to the division the applicant's license as a physician and
2180 surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
2181 and has agreed the applicant's license as a physician and surgeon will be automatically revoked
2182 by the division if the applicant fails to continue in good standing in an ACGME approved
2183 progressive resident training program within the state;

2184 (f) pass the licensing examination sequence required by division rule made in
2185 collaboration with the board;

2186 (g) be able to read, write, speak, understand, and be understood in the English language
2187 and demonstrate proficiency to the satisfaction of the board if requested by the board;

2188 (h) meet with the board and representatives of the division, if requested, for the
2189 purpose of evaluating the applicant's qualifications for licensure;

2190 (i) designate:

2191 (i) a contact person for access to medical records in accordance with the federal Health
2192 Insurance Portability and Accountability Act; and

2193 (ii) an alternate contact person for access to medical records, in the event the original
2194 contact person is unable or unwilling to serve as the contact person for access to medical
2195 records; and

2196 (j) establish a method for notifying patients of the identity and location of the contact
2197 person and alternate contact person, if the applicant will practice in a location with no other
2198 persons licensed under this chapter.

2199 (2) An applicant for licensure as a physician and surgeon by endorsement who is
2200 currently licensed to practice medicine in any state other than Utah, a district or territory of the
2201 United States, or Canada shall:

2202 (a) be currently licensed with a full unrestricted license in good standing in any state,
2203 district, or territory of the United States, or Canada;

2204 (b) have been actively engaged in the legal practice of medicine in any state, district, or
2205 territory of the United States, or Canada for not less than 6,000 hours during the five years
2206 immediately preceding the date of application for licensure in Utah;

2207 (c) comply with the requirements for licensure under Subsections (1)(a) through (d),
2208 (1)(e)(i), and (1)(g) through (j);

2209 (d) have passed the licensing examination sequence required in Subsection ~~[(1)(e)]~~
2210 (1)(f) or another medical licensing examination sequence in another state, district or territory of
2211 the United States, or Canada that the division in collaboration with the board by rulemaking
2212 determines is equivalent to its own required examination;

2213 (e) not have any investigation or action pending against any health care license of the
2214 applicant, not have a health care license that was suspended or revoked in any state, district or
2215 territory of the United States, or Canada, and not have surrendered a health care license in lieu
2216 of a disciplinary action, unless:

2217 (i) the license was subsequently reinstated as a full unrestricted license in good
2218 standing; or

2219 (ii) the division in collaboration with the board determines to its satisfaction, after full
2220 disclosure by the applicant, that:

2221 (A) the conduct has been corrected, monitored, and resolved; or

2222 (B) a mitigating circumstance exists that prevents its resolution, and the division in
2223 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
2224 would be reinstated;

2225 (f) submit to a records review, a practice history review, and comprehensive
2226 assessments, if requested by the division in collaboration with the board; and

2227 (g) produce satisfactory evidence that the applicant meets the requirements of this
2228 Subsection (2) to the satisfaction of the division in collaboration with the board.

2229 (3) An applicant for licensure by endorsement may engage in the practice of medicine
2230 under a temporary license while the applicant's application for licensure is being processed by
2231 the division, provided:

2232 (a) the applicant submits a complete application required for temporary licensure to the
2233 division;

2234 (b) the applicant submits a written document to the division from:

2235 (i) a health care facility licensed under [~~Title 26, Chapter 21, Health Care Facility~~
2236 ~~Licensing and Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and
2237 Inspection, stating that the applicant is practicing under the:

2238 (A) invitation of the health care facility; and

2239 (B) the general supervision of a physician practicing at the facility; or

2240 (ii) two individuals licensed under this chapter, whose license is in good standing and
2241 who practice in the same clinical location, both stating that:

2242 (A) the applicant is practicing under the invitation and general supervision of the
2243 individual; and

2244 (B) the applicant will practice at the same clinical location as the individual;

2245 (c) the applicant submits a signed certification to the division that the applicant meets
2246 the requirements of Subsection (2);

2247 (d) the applicant does not engage in the practice of medicine until the division has
2248 issued a temporary license;

2249 (e) the temporary license is only issued for and may not be extended or renewed
2250 beyond the duration of one year from issuance; and

2251 (f) the temporary license expires immediately and prior to the expiration of one year
2252 from issuance, upon notification from the division that the applicant's application for licensure
2253 by endorsement is denied.

2254 (4) The division shall issue a temporary license under Subsection (3) within 15
2255 business days after the applicant satisfies the requirements of Subsection (3).

2256 (5) The division may not require the following requirements for licensure:

2257 (a) a post-residency board certification; or

2258 (b) a cognitive test when the physician reaches a specified age, unless:
2259 (i) the screening is based on evidence of cognitive changes associated with aging that
2260 are relevant to physician performance;
2261 (ii) the screening is based on principles of medical ethics;
2262 (iii) physicians are involved in the development of standards for assessing competency;
2263 (iv) guidelines, procedures, and methods of assessment, which may include cognitive
2264 screening, are relevant to physician practice and to the physician's ability to perform the tasks
2265 specifically required in the physician's practice environment;
2266 (v) the primary driver for establishing assessment results is the ethical obligation of the
2267 profession to the health of the public and patient safety;
2268 (vi) the goal of the assessment is to optimize physician competency and performance
2269 through education, remediation, and modifications to a physician's practice environment or
2270 scope;
2271 (vii) a credentialing committee determines that public health or patient safety is
2272 directly threatened, the screening permits a physician to retain the right to modify the
2273 physician's practice environment to allow the physician to continue to provide safe and
2274 effective care;
2275 (viii) guidelines, procedures, and methods of assessment are transparent to physicians
2276 and physicians' representatives, if requested by a physician or a physician's representative, and
2277 physicians are made aware of the specific methods used, performance expectations and
2278 standards against which performance will be judged, and the possible outcomes of the
2279 screening or assessment;
2280 (ix) education or remediation practices that result from screening or assessment
2281 procedures are:
2282 (A) supportive of physician wellness;
2283 (B) ongoing; and
2284 (C) proactive; and
2285 (x) procedures and screening mechanisms that are distinctly different from for cause
2286 assessments do not result in undue cost or burden to senior physicians providing patient care.
2287 Section 33. Section **58-67-304** is amended to read:
2288 **58-67-304. License renewal requirements.**

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(i);

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee; and

(d) if the licensee is an associate physician licensed under Section 58-67-302.8, successfully complete the educational methods and programs described in Subsection 58-67-807(4).

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of ~~Health~~ Health and Human Services in fulfilling its responsibilities relating to the licensing of an abortion clinic and the enforcement of Title 76, Chapter 7, Part 3, Abortion, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of ~~Health~~ Health

2320 and Human Services in writing:

2321 (a) of the name and business address of the physician; and

2322 (b) that the physician responded positively to the question described in Subsection

2323 (3)(a).

2324 (5) The division shall accept and apply toward the hour requirement in Subsection

2325 (1)(a) any continuing education that a physician completes in accordance with Sections

2326 [~~26-61a-106~~] 26B-4-204 and [~~26-61a-403~~] 26B-4-219.

2327 Section 34. Section **58-67-502** is amended to read:

2328 **58-67-502. Unprofessional conduct.**

2329 (1) "Unprofessional conduct" includes, in addition to the definition in Section

2330 58-1-501:

2331 (a) using or employing the services of any individual to assist a licensee in any manner

2332 not in accordance with the generally recognized practices, standards, or ethics of the

2333 profession, state law, or division rule;

2334 (b) making a material misrepresentation regarding the qualifications for licensure under

2335 Section 58-67-302.7 or Section 58-67-302.8;

2336 (c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
2337 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

2338 (d) violating the requirements of [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~]
2339 Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or

2340 (e) falsely making an entry in, or altering, a medical record with the intent to conceal:

2341 (i) a wrongful or negligent act or omission of an individual licensed under this chapter

2342 or an individual under the direction or control of an individual licensed under this chapter; or

2343 (ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1).

2344 (2) "Unprofessional conduct" does not include:

2345 (a) in compliance with Section 58-85-103:

2346 (i) obtaining an investigational drug or investigational device;

2347 (ii) administering the investigational drug to an eligible patient; or

2348 (iii) treating an eligible patient with the investigational drug or investigational device;

2349 or

2350 (b) in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B,

Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis:

(i) when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section ~~[26-61a-102]~~ [26B-4-201](#), recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section ~~[26-61a-102]~~ [26B-4-201](#), providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section ~~[26-61a-102]~~ [26B-4-201](#), providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 35. Section **58-67-601** is amended to read:

58-67-601. Mentally incompetent or incapacitated physician.

(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section [75-1-201](#).

(b) "Mental illness" means the same as that term is defined in Section ~~[62A-15-602]~~ [26B-5-301](#).

(c) "Physician" means an individual licensed under this chapter.

(2) If a court of competent jurisdiction determines a physician is an incapacitated person or that the physician has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or

physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the physician's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the physician has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the physician's patients or the general public.

(c) (i) Failure of a physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the physician's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.

(5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the physician's

2413 patients or the general public.

2414 (6) A physician whose license is revoked, suspended, or in any way restricted under
2415 this section may request the division and the board to consider, at reasonable intervals,
2416 evidence presented by the physician, under procedures established by division rule, regarding
2417 any change in the physician's condition, to determine whether:

2418 (a) the physician is or is not able to safely and competently engage in the practice of
2419 medicine; and

2420 (b) the physician is qualified to have the physician's license to practice under this
2421 chapter restored completely or in part.

2422 Section 36. Section **58-67-702** is amended to read:

2423 **58-67-702. Opiate antagonist -- Exclusion from unlawful or unprofessional**
2424 **conduct.**

2425 (1) As used in this section:

2426 (a) "Dispense" means the same as that term is defined in Section [58-17b-102](#).

2427 (b) "Increased risk" means the same as that term is defined in Section [\[26-55-102\]](#)
2428 [26B-4-501](#).

2429 (c) "Opiate antagonist" means the same as that term is defined in Section [\[26-55-102\]](#)
2430 [26B-4-501](#).

2431 (d) "Opiate-related drug overdose event" means the same as that term is defined in
2432 Section [\[26-55-102\]](#) [26B-4-501](#).

2433 (e) "Prescribe" means the same as that term is defined in Section [58-17b-102](#).

2434 (2) The prescribing or dispensing of an opiate antagonist by a licensee under this
2435 chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the
2436 opiate antagonist:

2437 (a) in a good faith effort to assist:

2438 (i) an individual who is at increased risk of experiencing an opiate-related drug
2439 overdose event; or

2440 (ii) a family member of, friend of, or other person, including a person described in
2441 Subsections [\[26-55-107\(1\)\(a\)\(i\)\(A\)\]](#) [26B-4-512\(1\)\(a\)\(i\)\(A\)](#) through (1)(a)(i)(F), that is in a
2442 position to assist an individual who is at increased risk of experiencing an opiate-related drug
2443 overdose event; or

2444 (b) to an overdose outreach provider pursuant to Subsection ~~[26-55-104(2)(a)(iii)]~~
2445 26B-4-509(2)(a)(iii).

2446 (3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response~~
2447 ~~Act]~~ Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care
2448 in the prescribing, dispensing, or administration of an opiate antagonist.

2449 Section 37. Section **58-68-302** is amended to read:

2450 **58-68-302. Qualifications for licensure.**

2451 (1) An applicant for licensure as an osteopathic physician and surgeon, except as set
2452 forth in Subsection (2), shall:

2453 (a) submit an application in a form prescribed by the division, which may include:

2454 (i) submissions by the applicant of information maintained by practitioner data banks,
2455 as designated by division rule, with respect to the applicant;

2456 (ii) a record of professional liability claims made against the applicant and settlements
2457 paid by or on behalf of the applicant; and

2458 (iii) authorization to use a record coordination and verification service approved by the
2459 division in collaboration with the board;

2460 (b) pay a fee determined by the department under Section 63J-1-504;

2461 (c) if the applicant is applying to participate in the Interstate Medical Licensure
2462 Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal
2463 background check in accordance with Section 58-68-302.1 and any requirements established by
2464 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2465 (d) provide satisfactory documentation of having successfully completed a program of
2466 professional education preparing an individual as an osteopathic physician and surgeon, as
2467 evidenced by:

2468 (i) having received an earned degree of doctor of osteopathic medicine from an AOA
2469 approved medical school or college; or

2470 (ii) submitting a current certification by the Educational Commission for Foreign
2471 Medical Graduates or any successor organization approved by the division in collaboration
2472 with the board, if the applicant is graduated from an osteopathic medical school or college
2473 located outside of the United States or its territories which at the time of the applicant's
2474 graduation, met criteria for accreditation by the AOA;

2475 (e) satisfy the division and board that the applicant:

2476 (i) has successfully completed 24 months of progressive resident training in an
2477 ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine
2478 required under Subsection (1)(d); or

2479 (ii) (A) has successfully completed 12 months of resident training in an ACGME or
2480 AOA approved program after receiving a degree of doctor of osteopathic medicine as required
2481 under Subsection (1)(d);

2482 (B) has been accepted in and is successfully participating in progressive resident
2483 training in an ACGME or AOA approved program within Utah, in the applicant's second or
2484 third year of postgraduate training; and

2485 (C) has agreed to surrender to the division the applicant's license as an osteopathic
2486 physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative
2487 Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon
2488 will be automatically revoked by the division if the applicant fails to continue in good standing
2489 in an ACGME or AOA approved progressive resident training program within the state;

2490 (f) pass the licensing examination sequence required by division rule, as made in
2491 collaboration with the board;

2492 (g) be able to read, write, speak, understand, and be understood in the English language
2493 and demonstrate proficiency to the satisfaction of the board, if requested by the board;

2494 (h) meet with the board and representatives of the division, if requested for the purpose
2495 of evaluating the applicant's qualifications for licensure;

2496 (i) designate:

2497 (i) a contact person for access to medical records in accordance with the federal Health
2498 Insurance Portability and Accountability Act; and

2499 (ii) an alternate contact person for access to medical records, in the event the original
2500 contact person is unable or unwilling to serve as the contact person for access to medical
2501 records; and

2502 (j) establish a method for notifying patients of the identity and location of the contact
2503 person and alternate contact person, if the applicant will practice in a location with no other
2504 persons licensed under this chapter.

2505 (2) An applicant for licensure as an osteopathic physician and surgeon by endorsement

who is currently licensed to practice osteopathic medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in any state, district or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of osteopathic medicine in any state, district or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the day on which the applicant applied for licensure in Utah;

(c) comply with the requirements for licensure under Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j);

(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good standing; or

(ii) the division in collaboration with the board determines, after full disclosure by the applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;

(f) submit to a records review, a practice review history, and physical and psychological assessments, if requested by the division in collaboration with the board; and

(g) produce evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

(3) An applicant for licensure by endorsement may engage in the practice of medicine

2537 under a temporary license while the applicant's application for licensure is being processed by
2538 the division, provided:

2539 (a) the applicant submits a complete application required for temporary licensure to the
2540 division;

2541 (b) the applicant submits a written document to the division from:

2542 (i) a health care facility licensed under [~~Title 26, Chapter 21, Health Care Facility~~
2543 ~~Licensing and Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and
2544 Inspection, stating that the applicant is practicing under the:

2545 (A) invitation of the health care facility; and

2546 (B) the general supervision of a physician practicing at the health care facility; or

2547 (ii) two individuals licensed under this chapter, whose license is in good standing and
2548 who practice in the same clinical location, both stating that:

2549 (A) the applicant is practicing under the invitation and general supervision of the
2550 individual; and

2551 (B) the applicant will practice at the same clinical location as the individual;

2552 (c) the applicant submits a signed certification to the division that the applicant meets
2553 the requirements of Subsection (2);

2554 (d) the applicant does not engage in the practice of medicine until the division has
2555 issued a temporary license;

2556 (e) the temporary license is only issued for and may not be extended or renewed
2557 beyond the duration of one year from issuance; and

2558 (f) the temporary license expires immediately and prior to the expiration of one year
2559 from issuance, upon notification from the division that the applicant's application for licensure
2560 by endorsement is denied.

2561 (4) The division shall issue a temporary license under Subsection (3) within 15
2562 business days after the applicant satisfies the requirements of Subsection (3).

2563 (5) The division may not require a:

2564 (a) post-residency board certification; or

2565 (b) a cognitive test when the physician reaches a specified age, unless the test reflects
2566 the standards described in Subsections 58-67-302(5)(b)(i) through (x).

2567 Section 38. Section **58-68-304** is amended to read:

58-68-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-68-302(1)(i);

(c) if the licensee practices osteopathic medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for access to medical records for the licensee in accordance with Subsection 58-68-302(1)(j); and

(d) if the licensee is an associate physician licensed under Section 58-68-302.5, successfully complete the educational methods and programs described in Subsection 58-68-807(4).

(2) If a renewal period is extended or shortened under Section 58-68-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of [~~Health~~] Health and Human Services in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30

2599 days after the day on which it renews the physician's license under this chapter, inform the
2600 Department of ~~[Health]~~ Health and Human Services in writing:

2601 (a) of the name and business address of the physician; and
2602 (b) that the physician responded positively to the question described in Subsection
2603 (3)(a).

2604 (5) The division shall accept and apply toward the hour requirement in Subsection
2605 (1)(a) any continuing education that a physician completes in accordance with Sections
2606 ~~[26-61a-106]~~ 26B-4-204 and ~~[26-61a-403]~~ 26B-4-219.

2607 Section 39. Section **58-68-502** is amended to read:

2608 **58-68-502. Unprofessional conduct.**

2609 (1) "Unprofessional conduct" includes, in addition to the definition in Section
2610 58-1-501:

2611 (a) using or employing the services of any individual to assist a licensee in any manner
2612 not in accordance with the generally recognized practices, standards, or ethics of the
2613 profession, state law, or division rule;

2614 (b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical
2615 Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

2616 (c) making a material misrepresentation regarding the qualifications for licensure under
2617 Section 58-68-302.5;

2618 (d) violating the requirements of ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~
2619 Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or

2620 (e) falsely making an entry in, or altering, a medical record with the intent to conceal:

2621 (i) a wrongful or negligent act or omission of an individual licensed under this chapter
2622 or an individual under the direction or control of an individual licensed under this chapter; or

2623 (ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1).

2624 (2) "Unprofessional conduct" does not include:

2625 (a) in compliance with Section 58-85-103:

2626 (i) obtaining an investigational drug or investigational device;

2627 (ii) administering the investigational drug to an eligible patient; or

2628 (iii) treating an eligible patient with the investigational drug or investigational device;

2629 or

(b) in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis:

(i) when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section [~~26-61a-102~~] 26B-4-201, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 40. Section **58-68-601** is amended to read:

58-68-601. Mentally incompetent or incapacitated osteopathic physician.

(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.

(b) "Licensee" means an individual licensed under this chapter.

(c) "Mental illness" means the same as that term is defined in Section [~~62A-15-602~~] 26B-5-301.

(2) If a court of competent jurisdiction determines a licensee is an incapacitated person or that the licensee has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the licensee upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the licensee, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a licensee, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing osteopathic medicine with reasonable skill regarding the

safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the licensee with a notice of hearing on the sole issue of the capacity of the licensee to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every individual who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the licensee's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the licensee has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the licensee's patients or the general public.

(c) (i) Failure of a licensee to submit to the examination ordered under this section is a ground for the division's immediate suspension of the licensee's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the licensee and was not related directly to the illness or incapacity of the licensee.

(5) (a) A licensee whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists

for the continuance of the order of suspension in order to prevent harm to the licensee's patients or the general public.

(6) A licensee whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the licensee, under procedures established by division rule, regarding any change in the licensee's condition, to determine whether:

(a) the licensee is or is not able to safely and competently engage in the practice of medicine; and

(b) the licensee is qualified to have the licensee's license to practice under this chapter restored completely or in part.

Section 41. Section **58-68-702** is amended to read:

58-68-702. Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.

(1) As used in this section:

(a) "Dispense" means the same as that term is defined in Section [58-17b-102](#).

(b) "Increased risk" means the same as that term is defined in Section [\[26-55-102\]](#) [26B-4-501](#).

(c) "Opiate antagonist" means the same as that term is defined in Section [\[26-55-102\]](#) [26B-4-501](#).

(d) "Opiate-related drug overdose event" means the same as that term is defined in Section [\[26-55-102\]](#) [26B-4-501](#).

(e) "Prescribe" means the same as that term is defined in Section [58-17b-102](#).

(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:

(a) in a good faith effort to assist:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(ii) a family member of, friend of, or other person, including a person described in Subsections [\[26-55-107\(1\)\(a\)\(i\)\(A\)\]](#) [26B-4-512\(1\)\(a\)\(i\)\(A\)](#) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug

overdose event; or

(b) to an overdose outreach provider pursuant to Subsection ~~[26-55-104(2)(a)(iii)]~~
26B-4-504(2)(a)(iii).

(3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response Act]~~ Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Section 42. Section ~~58-69-601~~ is amended to read:

58-69-601. Mentally incompetent or incapacitated dentist or dental hygienist.

(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.

(b) "Mental illness" is as defined in Section ~~[62A-15-602]~~ 26B-5-301.

(2) If a court of competent jurisdiction determines a dentist or dental hygienist is an incapacitated person or that the dentist or hygienist has a mental illness and is unable to safely engage in the practice of dentistry or dental hygiene, the director shall immediately suspend the license of the dentist or dental hygienist upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing dentistry or dental hygiene with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the dentist or dental hygienist with a notice of hearing on the sole issue of the capacity of the dentist or dental hygienist to competently and safely engage in the practice of dentistry or dental hygiene.

(b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every dentist or dental hygienist who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the dentist or dental hygienist's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the dentist or dental hygienist has a mental illness, is incapacitated, or otherwise unable to practice dentistry or dental hygiene with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the dentist's or dental hygienist's patients or the general public.

(c) (i) Failure of a dentist or dental hygienist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the dentist's or dental hygienist's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the dentist or dental hygienist and was not related directly to the illness or incapacity of the dentist or dental hygienist.

(5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the dentist's or dental hygienist's patients or the general public.

(6) A dentist or dental hygienist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the dentist or dental hygienist, under procedures established by division rule, regarding any change in the dentist's or dental hygienist's condition, to determine

2785 whether:

2786 (a) the dentist or dental hygienist is or is not able to safely and competently engage in
2787 the practice of dentistry or dental hygiene; and

2788 (b) the dentist or dental hygienist is qualified to have the dentist or dental hygienist's
2789 licensure to practice under this chapter restored completely or in part.

2790 Section 43. Section **58-69-702** is amended to read:

2791 **58-69-702. Opiate antagonist -- Exclusion from unlawful or unprofessional**
2792 **conduct.**

2793 (1) As used in this section:

2794 (a) "Dispense" means the same as that term is defined in Section [58-17b-102](#).

2795 (b) "Increased risk" means the same as that term is defined in Section ~~[26-55-102]~~
2796 [26B-4-501](#).

2797 (c) "Opiate antagonist" means the same as that term is defined in Section ~~[26-55-102]~~
2798 [26B-4-501](#).

2799 (d) "Opiate-related drug overdose event" means the same as that term is defined in
2800 Section ~~[26-55-102]~~ [26B-4-501](#).

2801 (e) "Prescribe" means the same as that term is defined in Section [58-17b-102](#).

2802 (2) The prescribing or dispensing of an opiate antagonist by an individual licensed
2803 under this chapter to engage in the practice of dentistry is not unprofessional or unlawful
2804 conduct if the licensee prescribed or dispensed the opiate antagonist:

2805 (a) in a good faith effort to assist:

2806 (i) an individual who is at increased risk of experiencing an opiate-related drug
2807 overdose event; or

2808 (ii) a family member of, friend of, or other person, including a person described in
2809 Subsections ~~[26-55-107(1)(a)(i)(A)]~~ [26B-55-107\(1\)\(a\)\(i\)\(A\)](#) through (1)(a)(i)(F), that is in a
2810 position to assist an individual who is at increased risk of experiencing an opiate-related drug
2811 overdose event; or

2812 (b) to an overdose outreach provider pursuant to Subsection ~~[26-55-104(2)(a)(iii)]~~
2813 [26B-4-509\(2\)\(a\)\(iii\)](#).

2814 (3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response~~
2815 ~~Act]~~ [Title 26B, Chapter 4, Part 5, Treatment Access](#), do not establish a duty or standard of care

in the prescribing, dispensing, or administration of an opiate antagonist.

Section 44. Section **58-70a-102** is amended to read:

58-70a-102. Definitions.

In addition to the definitions in Section **58-1-102**, as used in this chapter:

(1) "Board" means the Physician Assistant Licensing Board created in Section **58-70a-201**.

(2) "Competence" means possessing the requisite cognitive, non-cognitive, and communicative abilities and qualities to perform effectively within the scope of practice of the physician assistant's practice while adhering to professional and ethical standards.

(3) "Health care facility" means the same as that term is defined in Section ~~[26-21-2]~~ **26B-2-201**.

(4) "Mental health therapist" means the same as that term is defined in Section **58-60-102**.

(5) "Physician" means the same as that term is defined in Section **58-67-102**.

(6) "Physician assistant" means an individual who is licensed to practice under this chapter.

(7) "Practice as a physician assistant" means the professional activities and conduct of a physician assistant, also known as a PA, in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition under the provisions of this chapter.

(8) "Practice of mental health therapy" means the same as that term is defined in Section **58-60-102**.

(9) "Unlawful conduct" means the same as that term is defined in Sections **58-1-501** and **58-70a-502**.

(10) "Unprofessional conduct" means "unprofessional conduct":

(a) as defined in Sections **58-1-501** and **58-70a-503**; and

(b) as further defined by the division by rule.

Section 45. Section **58-70a-303** is amended to read:

58-70a-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements.

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section [58-1-308](#).

(4) The division shall accept and apply toward an hour requirement that the division establishes under Subsection (2) continuing education that a physician assistant completes in accordance with Section ~~[26-61a-106]~~ [26B-4-204](#).

Section 46. Section **58-70a-503** is amended to read:

58-70a-503. Unprofessional conduct.

(1) "Unprofessional conduct" includes:

(a) violation of a patient confidence to any person who does not have a legal right and a professional need to know the information concerning the patient;

(b) knowingly prescribing, selling, giving away, or directly or indirectly administering, or offering to prescribe, sell, furnish, give away, or administer any prescription drug except for a legitimate medical purpose upon a proper diagnosis indicating use of that drug in the amounts prescribed or provided;

(c) prescribing prescription drugs for oneself or administering prescription drugs to oneself, except those that have been legally prescribed for the physician assistant by a licensed practitioner and that are used in accordance with the prescription order for the condition diagnosed;

(d) in a practice that has physician assistant ownership interests, failure to allow a physician the independent final decision making authority on treatment decisions for the physician's patient;

(e) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(f) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (e) or Subsection [58-1-501](#)(1); and

(g) violating the requirements of [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~]
Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(2) (a) "Unprofessional conduct" does not include, in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section [~~26-61a-102~~] 26B-4-201, recommending the use of medical cannabis.

(b) Notwithstanding Subsection (2)(a), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician assistant described in Subsection (2)(a).

Section 47. Section ~~58-70a-505~~ is amended to read:

~~58-70a-505. Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.~~

(1) As used in this section:

(a) "Dispense" means the same as that term is defined in Section 58-17b-102.

(b) "Increased risk" means the same as that term is defined in Section [~~26-55-102~~] 26B-4-501.

(c) "Opiate antagonist" means the same as that term is defined in Section [~~26-55-102~~] 26B-4-501.

(d) "Opiate-related drug overdose event" means the same as that term is defined in Section [~~26-55-102~~] 26B-4-501.

(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:

(a) in a good faith effort to assist:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(ii) a family member of, friend of, or other person, including a person described in Subsections [~~26-55-107(1)(a)(i)(A)~~] 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug

overdose event; or

(b) to an overdose outreach provider pursuant to Subsection [~~26-55-104(2)(a)(iii)~~]
26B-4-509(2)(a)(iii).

(3) The provisions of this section and [~~Title 26, Chapter 55, Opiate Overdose Response Act~~] Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Section 48. Section ~~58-71-601~~ is amended to read:

~~58-71-601. Mentally incompetent or incapacitated naturopathic physician.~~

(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.

(b) "Mental illness" is as defined in Section [~~62A-15-602~~] 26B-5-303.

(2) If a court of competent jurisdiction determines a naturopathic physician is an incapacitated person or that the physician has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the naturopathic physician upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the naturopathic physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a naturopathic physician, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the naturopathic physician with a notice of hearing on the sole issue of the capacity of the naturopathic physician to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every naturopathic physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the physician's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the naturopathic physician has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the naturopathic physician's patients or the general public.

(c) (i) Failure of a naturopathic physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the naturopathic physician's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the naturopathic physician and was not related directly to the illness or incapacity of the naturopathic physician.

(5) (a) A naturopathic physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the naturopathic physician's patients or the general public.

(6) A naturopathic physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the naturopathic physician, under procedures established by division rule, regarding any change in the naturopathic physician's condition, to determine whether:

2971 (a) the physician is or is not able to safely and competently engage in the practice of
2972 medicine; and

2973 (b) the physician is qualified to have the physician's license to practice under this
2974 chapter restored completely or in part.

2975 Section 49. Section **58-80a-601** is amended to read:

2976 **58-80a-601. Priority for certified medical language interpreter.**

2977 The [~~Department of Health and the Department of Human Services~~] Department of
2978 Health and Human Services may give priority to contracting with companies that use certified
2979 medical language interpreters.

2980 Section 50. Section **58-85-104** is amended to read:

2981 **58-85-104. Standard of care -- Medical practitioners not liable -- No private right**
2982 **of action.**

2983 (1) It is not a breach of the applicable standard of care for a physician, other licensed
2984 health care provider, or hospital to treat an eligible patient with an investigational drug or
2985 investigational device under this chapter.

2986 (2) A physician, other licensed health care provider, or hospital that treats an eligible
2987 patient with an investigational drug or investigational device under this chapter may not, for
2988 any harm done to the eligible patient by the investigational drug or device, be subject to:

2989 (a) civil liability;

2990 (b) criminal liability; or

2991 (c) licensure sanctions under:

2992 (i) for a physician:

2993 (A) [~~Title 58,~~] Chapter 67, Utah Medical Practice Act; or

2994 (B) [~~Title 58,~~] Chapter 68, Utah Osteopathic Medical Practice Act;

2995 (ii) for the other licensed health care provider, the act governing the other licensed
2996 health care provider's license; or

2997 (iii) for the hospital, [~~Title 26, Chapter 21, Health Care Facility Licensing and~~
2998 ~~Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection.

2999 (3) This chapter does not:

3000 (a) require a manufacturer of an investigational drug or investigational device to agree
3001 to make an investigational drug or investigational device available to an eligible patient or an

3002 eligible patient's physician;
3003 (b) require a physician to agree to:
3004 (i) administer an investigational drug to an eligible patient under this chapter; or
3005 (ii) treat an eligible patient with an investigational device under this chapter; or
3006 (c) create a private right of action for an eligible patient:
3007 (i) against a physician or hospital, for the physician's or hospital's refusal to:
3008 (A) administer an investigational drug to an eligible patient under this chapter; or
3009 (B) treat an eligible patient with an investigational device under this chapter; or
3010 (ii) against a manufacturer, for the manufacturer's refusal to provide an eligible patient
3011 with an investigational drug or an investigational device under this chapter.

3012 Section 51. Section **58-88-201** is amended to read:

3013 **58-88-201. Definitions.**

3014 As used in this part:

3015 (1) (a) "Dispense" means the delivery by a prescriber of a prescription drug or device to
3016 a patient, including the packaging, labeling, and security necessary to prepare and safeguard the
3017 drug or device for supplying to a patient.

3018 (b) "Dispense" does not include:

3019 (i) prescribing or administering a drug or device; or

3020 (ii) delivering to a patient a sample packaged for individual use by a licensed
3021 manufacturer or re-packager of a drug or device.

3022 (2) "Dispensing practitioner" means an individual who:

3023 (a) is currently licensed as:

3024 (i) a physician and surgeon under Chapter 67, Utah Medical Practice Act;

3025 (ii) an osteopathic physician and surgeon under Chapter 68, Utah Osteopathic Medical
3026 Practice Act;

3027 (iii) an advanced practice registered nurse under Subsection [58-31b-301\(2\)\(d\)](#); or

3028 (iv) a physician assistant under Chapter 70a, Utah Physician Assistant Act;

3029 (b) is authorized by state law to prescribe and administer drugs in the course of
3030 professional practice; and

3031 (c) practices at a licensed dispensing practice.

3032 (3) "Drug" means the same as that term is defined in Section [58-17b-102](#).

3033 (4) "Health care practice" means:

3034 (a) a health care facility as defined in Section ~~[26-21-2]~~ [26B-2-201](#); or

3035 (b) the offices of one or more private prescribers, whether for individual or group
3036 practice.

3037 (5) "Licensed dispensing practice" means a health care practice that is licensed as a
3038 dispensing practice under Section [58-88-202](#).

3039 Section 52. Section **59-1-210** is amended to read:

3040 **59-1-210. General powers and duties.**

3041 The powers and duties of the commission are as follows:

3042 (1) to sue and be sued in its own name;

3043 (2) to adopt rules and policies consistent with the Constitution and laws of this state to
3044 govern the commission, executive director, division directors, and commission employees in
3045 the performance of their duties;

3046 (3) to adopt rules and policies consistent with the Constitution and laws of the state, to
3047 govern county boards and officers in the performance of any duty relating to assessment,
3048 equalization, and collection of taxes;

3049 (4) to prescribe the use of forms relating to the assessment of property for state or local
3050 taxation, the equalization of those assessments, the reporting of property or income for state or
3051 local taxation purposes, or for the computation of those taxes and the reporting of any
3052 information, statistics, or data required by the commission;

3053 (5) to administer and supervise the tax laws of the state;

3054 (6) to prepare and maintain from year to year a complete record of all lands subject to
3055 taxation in this state, and all machinery used in mining and all property or surface
3056 improvements upon or appurtenant to mines or mining claims;

3057 (7) to exercise general supervision over assessors and county boards of equalization
3058 including the authority to enforce Section [59-2-303.1](#), and over other county officers in the
3059 performance of their duties relating to the assessment of property and collection of taxes, so
3060 that all assessments of property are just and equal, according to fair market value, and that the
3061 tax burden is distributed without favor or discrimination;

3062 (8) to reconvene any county board of equalization which, when reconvened, may only
3063 address business approved by the commission and extend the time for which any county board

3064 of equalization may sit for the equalization of assessments;

3065 (9) to confer with, advise, and direct county treasurers, assessors, and other county
3066 officers in matters relating to the assessment and equalization of property for taxation and the
3067 collection of taxes;

3068 (10) to provide for and hold annually at such time and place as may be convenient a
3069 district or state convention of county assessors, auditors, and other county officers to consider
3070 and discuss matters relative to taxation, uniformity of valuation, and changes in the law relative
3071 to taxation and methods of assessment, to which county assessors and other officers called to
3072 attend shall attend at county expense;

3073 (11) to direct proceedings, actions, and prosecutions to enforce the laws relating to the
3074 penalties, liabilities, and punishments of public officers, persons, and officers or agents of
3075 corporations for failure or neglect to comply with the statutes governing the reporting,
3076 assessment, and taxation of property;

3077 (12) to cause complaints to be made in the proper court seeking removal from office of
3078 assessors, auditors, members of county boards, and other assessing, taxing, or disbursing
3079 officers, who are guilty of official misconduct or neglect of duty;

3080 (13) to require county attorneys to immediately institute and prosecute actions and
3081 proceedings in respect to penalties, forfeitures, removals, and punishments for violations of the
3082 laws relating to the assessment and taxation of property in their respective counties;

3083 (14) to require any person to furnish any information required by the commission to
3084 ascertain the value and the relative burden borne by all kinds of property in the state, and to
3085 require from all state and local officers any information necessary for the proper discharge of
3086 the duties of the commission;

3087 (15) to examine all records relating to the valuation of property of any person;

3088 (16) to subpoena witnesses to appear and give testimony and produce records relating
3089 to any matter before the commission;

3090 (17) to cause depositions of witnesses to be taken as in civil actions at the request of
3091 the commission or any party to any matter or proceeding before the commission;

3092 (18) to authorize any member or employee of the commission to administer oaths and
3093 affirmations in any matter or proceeding relating to the exercise of the powers and duties of the
3094 commission;

(19) to visit periodically each county of the state, to investigate and direct the work and methods of local assessors and other officials in the assessment, equalization, and taxation of property, and to ascertain whether the law requiring the assessment of all property not exempt from taxation, and the collection of taxes, have been properly administered and enforced;

(20) to carefully examine all cases where evasion or violation of the laws for assessment and taxation of property is alleged, to ascertain whether existing laws are defective or improperly administered;

(21) to furnish to the governor from time to time such assistance and information as the governor requires;

(22) to transmit to the governor and to each member of the Legislature recommendations as to legislation which will correct or eliminate defects in the operation of the tax laws and will equalize the burden of taxation within the state;

(23) to correct any error in any assessment made by it at any time before the tax is due and report the correction to the county auditor, who shall enter the corrected assessment upon the assessment roll;

(24) to compile and publish statistics relating to taxation in the state and prepare and submit an annual budget to the governor for inclusion in the state budget to be submitted to the Legislature;

(25) to perform any further duties imposed by law, and exercise all powers necessary in the performance of its duties;

(26) to adopt a schedule of fees assessed for services provided by the commission, unless otherwise provided by statute. The fee shall be reasonable and fair, and shall reflect the cost of services provided. Each fee established in this manner shall be submitted to and approved by the Legislature as part of the commission's annual appropriations request. The commission may not charge or collect any fee proposed in this manner without approval by the Legislature;

(27) to comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings; and

(28) to distribute the money deposited into the Rural Health Care Facilities Account as required by Section ~~[26-9-4]~~ [26B-1-308](#).

Section 53. Section **59-1-403** is amended to read:

3126 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

3127 (1) As used in this section:

3128 (a) "Distributed tax, fee, or charge" means a tax, fee, or charge:

3129 (i) the commission administers under:

3130 (A) this title, other than a tax under Chapter 12, Part 2, Local Sales and Use Tax Act;

3131 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

3132 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

3133 (D) Section 19-6-805;

3134 (E) Section 63H-1-205; or

3135 (F) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges;

3136 and

3137 (ii) with respect to which the commission distributes the revenue collected from the

3138 tax, fee, or charge to a qualifying jurisdiction.

3139 (b) "Qualifying jurisdiction" means:

3140 (i) a county, city, town, or metro township; or

3141 (ii) the military installation development authority created in Section 63H-1-201.

3142 (2) (a) Any of the following may not divulge or make known in any manner any

3143 information gained by that person from any return filed with the commission:

3144 (i) a tax commissioner;

3145 (ii) an agent, clerk, or other officer or employee of the commission; or

3146 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or

3147 town.

3148 (b) An official charged with the custody of a return filed with the commission is not

3149 required to produce the return or evidence of anything contained in the return in any action or

3150 proceeding in any court, except:

3151 (i) in accordance with judicial order;

3152 (ii) on behalf of the commission in any action or proceeding under:

3153 (A) this title; or

3154 (B) other law under which persons are required to file returns with the commission;

3155 (iii) on behalf of the commission in any action or proceeding to which the commission

3156 is a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (2)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(4) (a) Notwithstanding Subsection (2) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (2) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (2) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the

3188 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
3189 due.

3190 (d) Notwithstanding Subsection (2), the commission shall provide to the director of the
3191 Division of Environmental Response and Remediation, as defined in Section 19-6-402, as
3192 requested by the director of the Division of Environmental Response and Remediation, any
3193 records, returns, or other information filed with the commission under Chapter 13, Motor and
3194 Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program
3195 participation fee.

3196 (e) Notwithstanding Subsection (2), at the request of any person the commission shall
3197 provide that person sales and purchase volume data reported to the commission on a report,
3198 return, or other information filed with the commission under:

3199 (i) Chapter 13, Part 2, Motor Fuel; or

3200 (ii) Chapter 13, Part 4, Aviation Fuel.

3201 (f) Notwithstanding Subsection (2), upon request from a tobacco product manufacturer,
3202 as defined in Section 59-22-202, the commission shall report to the manufacturer:

3203 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
3204 manufacturer and reported to the commission for the previous calendar year under Section
3205 59-14-407; and

3206 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
3207 manufacturer for which a tax refund was granted during the previous calendar year under
3208 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

3209 (g) Notwithstanding Subsection (2), the commission shall notify manufacturers,
3210 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
3211 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

3212 (h) Notwithstanding Subsection (2), the commission may:

3213 (i) provide to the Division of Consumer Protection within the Department of
3214 Commerce and the attorney general data:

3215 (A) reported to the commission under Section 59-14-212; or

3216 (B) related to a violation under Section 59-14-211; and

3217 (ii) upon request, provide to any person data reported to the commission under
3218 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (2), the commission shall, at the request of a committee of the Legislature, the Office of the Legislative Fiscal Analyst, or the Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (2), the commission shall make the directory required by Section 59-14-603 available for public inspection.

(k) Notwithstanding Subsection (2), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

(l) (i) Notwithstanding Subsection (2), the commission shall provide the Office of Recovery Services within the Department of ~~Human Services~~ Health and Human Services any relevant information obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.

(ii) The information described in Subsection (4)(l)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing that support obligation.

(m) (i) Notwithstanding Subsection (2), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and social security number on resident returns filed under Chapter 10, Individual Income Tax Act.

(ii) The state court administrator may use the information described in Subsection (4)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

(n) (i) As used in this Subsection (4)(n):

(A) "GO Utah office" means the Governor's Office of Economic Opportunity created in Section 63N-1a-301.

(B) "Income tax information" means information gained by the commission that is required to be attached to or included in a return filed with the commission under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act.

(C) "Other tax information" means information gained by the commission that is required to be attached to or included in a return filed with the commission except for a return filed under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual

3250 Income Tax Act.

3251 (D) "Tax information" means income tax information or other tax information.

3252 (ii) (A) Notwithstanding Subsection (2) and except as provided in Subsection
3253 (4)(n)(ii)(B) or (C), the commission shall at the request of the GO Utah office provide to the
3254 GO Utah office all income tax information.

3255 (B) For purposes of a request for income tax information made under Subsection
3256 (4)(n)(ii)(A), the GO Utah office may not request and the commission may not provide to the
3257 GO Utah office a person's address, name, social security number, or taxpayer identification
3258 number.

3259 (C) In providing income tax information to the GO Utah office, the commission shall
3260 in all instances protect the privacy of a person as required by Subsection (4)(n)(ii)(B).

3261 (iii) (A) Notwithstanding Subsection (2) and except as provided in Subsection
3262 (4)(n)(iii)(B), the commission shall at the request of the GO Utah office provide to the GO
3263 Utah office other tax information.

3264 (B) Before providing other tax information to the GO Utah office, the commission
3265 shall redact or remove any name, address, social security number, or taxpayer identification
3266 number.

3267 (iv) The GO Utah office may provide tax information received from the commission in
3268 accordance with this Subsection (4)(n) only:

3269 (A) as a fiscal estimate, fiscal note information, or statistical information; and

3270 (B) if the tax information is classified to prevent the identification of a particular
3271 return.

3272 (v) (A) A person may not request tax information from the GO Utah office under Title
3273 63G, Chapter 2, Government Records Access and Management Act, or this section, if the GO
3274 Utah office received the tax information from the commission in accordance with this
3275 Subsection (4)(n).

3276 (B) The GO Utah office may not provide to a person that requests tax information in
3277 accordance with Subsection (4)(n)(v)(A) any tax information other than the tax information the
3278 GO Utah office provides in accordance with Subsection (4)(n)(iv).

3279 (o) Notwithstanding Subsection (2), the commission may provide to the governing
3280 board of the agreement or a taxing official of another state, the District of Columbia, the United

3281 States, or a territory of the United States:

3282 (i) the following relating to an agreement sales and use tax:

3283 (A) information contained in a return filed with the commission;

3284 (B) information contained in a report filed with the commission;

3285 (C) a schedule related to Subsection (4)(o)(i)(A) or (B); or

3286 (D) a document filed with the commission; or

3287 (ii) a report of an audit or investigation made with respect to an agreement sales and
3288 use tax.

3289 (p) Notwithstanding Subsection (2), the commission may provide information
3290 concerning a taxpayer's state income tax return or state income tax withholding information to
3291 the Driver License Division if the Driver License Division:

3292 (i) requests the information; and

3293 (ii) provides the commission with a signed release form from the taxpayer allowing the
3294 Driver License Division access to the information.

3295 (q) Notwithstanding Subsection (2), the commission shall provide to the Utah
3296 Communications Authority, or a division of the Utah Communications Authority, the
3297 information requested by the authority under Sections [63H-7a-302](#), [63H-7a-402](#), and
3298 [63H-7a-502](#).

3299 (r) Notwithstanding Subsection (2), the commission shall provide to the Utah
3300 Educational Savings Plan information related to a resident or nonresident individual's
3301 contribution to a Utah Educational Savings Plan account as designated on the resident or
3302 nonresident's individual income tax return as provided under Section [59-10-1313](#).

3303 (s) Notwithstanding Subsection (2), for the purpose of verifying eligibility under
3304 Sections [~~26-18-2.5~~] [26B-3-106](#) and [~~26-40-105~~] [26B-3-903](#), the commission shall provide an
3305 eligibility worker with the Department of [~~Health~~] Health and Human Services or its designee
3306 with the adjusted gross income of an individual if:

3307 (i) an eligibility worker with the Department of [~~Health~~] Health and Human Services or
3308 its designee requests the information from the commission; and

3309 (ii) the eligibility worker has complied with the identity verification and consent
3310 provisions of Sections [~~26-18-2.5~~] [26B-3-106](#) and [~~26-40-105~~] [26B-3-903](#).

3311 (t) Notwithstanding Subsection (2), the commission may provide to a county, as

determined by the commission, information declared on an individual income tax return in accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

(u) Notwithstanding Subsection (2), the commission shall provide a report regarding any access line provider that is over 90 days delinquent in payment to the commission of amounts the access line provider owes under Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges, to the board of the Utah Communications Authority created in Section 63H-7a-201.

(v) Notwithstanding Subsection (2), the commission shall provide the Department of Environmental Quality a report on the amount of tax paid by a radioactive waste facility for the previous calendar year under Section 59-24-103.5.

(w) Notwithstanding Subsection (2), the commission may, upon request, provide to the Department of Workforce Services any information received under Chapter 10, Part 4, Withholding of Tax, that is relevant to the duties of the Department of Workforce Services.

(x) Notwithstanding Subsection (2), the commission may provide the Public Service Commission or the Division of Public Utilities information related to a seller that collects and remits to the commission a charge described in Subsection 69-2-405(2), including the seller's identity and the number of charges described in Subsection 69-2-405(2) that the seller collects.

(y) (i) Notwithstanding Subsection (2), the commission shall provide to each qualifying jurisdiction the collection data necessary to verify the revenue collected by the commission for a distributed tax, fee, or charge collected within the qualifying jurisdiction.

(ii) In addition to the information provided under Subsection (4)(y)(i), the commission shall provide a qualifying jurisdiction with copies of returns and other information relating to a distributed tax, fee, or charge collected within the qualifying jurisdiction.

(iii) (A) To obtain the information described in Subsection (4)(y)(ii), the chief executive officer or the chief executive officer's designee of the qualifying jurisdiction shall submit a written request to the commission that states the specific information sought and how the qualifying jurisdiction intends to use the information.

(B) The information described in Subsection (4)(y)(ii) is available only in official matters of the qualifying jurisdiction.

(iv) Information that a qualifying jurisdiction receives in response to a request under

3343 this subsection is:

3344 (A) classified as a private record under Title 63G, Chapter 2, Government Records
3345 Access and Management Act; and

3346 (B) subject to the confidentiality requirements of this section.

3347 (z) Notwithstanding Subsection (2), the commission shall provide the Alcoholic
3348 Beverage Services Commission, upon request, with taxpayer status information related to state
3349 tax obligations necessary to comply with the requirements described in Section 32B-1-203.

3350 (5) (a) Each report and return shall be preserved for at least three years.

3351 (b) After the three-year period provided in Subsection (5)(a) the commission may
3352 destroy a report or return.

3353 (6) (a) Any individual who violates this section is guilty of a class A misdemeanor.

3354 (b) If the individual described in Subsection (6)(a) is an officer or employee of the
3355 state, the individual shall be dismissed from office and be disqualified from holding public
3356 office in this state for a period of five years thereafter.

3357 (c) Notwithstanding Subsection (6)(a) or (b), the GO Utah office, when requesting
3358 information in accordance with Subsection (4)(n)(iii), or an individual who requests
3359 information in accordance with Subsection (4)(n)(v):

3360 (i) is not guilty of a class A misdemeanor; and

3361 (ii) is not subject to:

3362 (A) dismissal from office in accordance with Subsection (6)(b); or

3363 (B) disqualification from holding public office in accordance with Subsection (6)(b).

3364 (7) Except as provided in Section 59-1-404, this part does not apply to the property tax.
3365 Section 54. Section 59-2-1901 is amended to read:

3366 **59-2-1901. Definitions.**

3367 As used in this section:

3368 (1) "Active component of the United States Armed Forces" means the same as that
3369 term is defined in Section 59-10-1027.

3370 (2) "Active duty claimant" means a member of an active component of the United
3371 States Armed Forces or a reserve component of the United States Armed Forces who:

3372 (a) performed qualifying active duty military service; and

3373 (b) applies for an exemption described in Section 59-2-1902.

- 3374 (3) "Adjusted taxable value limit" means:
- 3375 (a) for the calendar year that begins on January 1, 2015, \$252,126; or
- 3376 (b) for each calendar year after the calendar year that begins on January 1, 2015, the
- 3377 amount of the adjusted taxable value limit for the previous year plus an amount calculated by
- 3378 multiplying the amount of the adjusted taxable value limit for the previous year by the actual
- 3379 percent change in the consumer price index during the previous calendar year.
- 3380 (4) "Consumer price index" means the same as that term is described in Section 1(f)(4),
- 3381 Internal Revenue Code, and defined in Section 1(f)(5), Internal Revenue Code.
- 3382 (5) "Deceased veteran with a disability" means a deceased individual who was a
- 3383 veteran with a disability at the time the individual died.
- 3384 (6) "Military entity" means:
- 3385 (a) the United States Department of Veterans Affairs;
- 3386 (b) an active component of the United States Armed Forces; or
- 3387 (c) a reserve component of the United States Armed Forces.
- 3388 (7) "Primary residence" includes the residence of a individual who does not reside in
- 3389 the residence if the individual:
- 3390 (a) does not reside in the residence because the individual is admitted as an inpatient at
- 3391 a health care facility as defined in Section ~~[26-55-102]~~ [26B-4-501](#); and
- 3392 (b) otherwise meets the requirements of this part.
- 3393 (8) "Qualifying active duty military service" means at least 200 days, regardless of
- 3394 whether consecutive, in any continuous 365-day period of active duty military service outside
- 3395 the state in an active component of the United States Armed Forces or a reserve component of
- 3396 the United States Armed Forces, if the days of active duty military service:
- 3397 (a) were completed in the year before an individual applies for an exemption described
- 3398 in Section [59-2-1902](#); and
- 3399 (b) have not previously been counted as qualifying active duty military service for
- 3400 purposes of qualifying for an exemption described in Section [59-2-1902](#) or applying for the
- 3401 exemption described in Section [59-2-1902](#).
- 3402 (9) "Statement of disability" means the statement of disability described in Section
- 3403 [59-2-1904](#).
- 3404 (10) "Reserve component of the United States Armed Forces" means the same as that

3405 term is defined in Section 59-10-1027.

3406 (11) "Residence" means real property where an individual resides, including:

3407 (a) a mobile home, as defined in Section 41-1a-102; or

3408 (b) a manufactured home, as defined in Section 41-1a-102.

3409 (12) "Veteran claimant" means one of the following individuals who applies for an
3410 exemption described in Section 59-2-1903:

3411 (a) a veteran with a disability;

3412 (b) the unmarried surviving spouse:

3413 (i) of a deceased veteran with a disability; or

3414 (ii) a veteran who was killed in action or died in the line of duty; or

3415 (c) a minor orphan:

3416 (i) of a deceased veteran with a disability; or

3417 (ii) a veteran who was killed in action or died in the line of duty.

3418 (13) "Veteran who was killed in action or died in the line of duty" means an individual
3419 who was killed in action or died in the line of duty in an active component of the United States
3420 Armed Forces or a reserve component of the United States Armed Forces, regardless of
3421 whether that individual had a disability at the time that individual was killed in action or died
3422 in the line of duty.

3423 (14) "Veteran with a disability" means an individual with a disability who, during
3424 military training or a military conflict, acquired a disability in the line of duty in an active
3425 component of the United States Armed Forces or a reserve component of the United States
3426 Armed Forces, as determined by a military entity.

3427 Section 55. Section 59-10-529 is amended to read:

3428 **59-10-529. Overpayment of tax -- Credits -- Refunds.**

3429 (1) If there has been an overpayment of any tax imposed by this chapter, the amount of
3430 overpayment is credited as follows:

3431 (a) against an income tax due from a taxpayer;

3432 (b) against:

3433 (i) the amount of a judgment against a taxpayer, including a final judgment or order
3434 requiring payment of a fine or of restitution to a victim under Title 77, Chapter 38b, Crime
3435 Victims Restitution Act, obtained through due process of law by an entity of state or local

3436 government; or

3437 (ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as
3438 determined by the Office of Recovery Services in the Department of [~~Human Services~~] Health
3439 and Human Services and after notice and an opportunity for an adjudicative proceeding, as
3440 provided in Subsection (4)(a)(iii); or

3441 (c) subject to Subsections (3), (5), (6), and (7), as bail to ensure the appearance of a
3442 taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer
3443 for which bail is due, if a court of competent jurisdiction has not approved an alternative form
3444 of payment.

3445 (2) If a balance remains after an overpayment is credited in accordance with Subsection
3446 (1), the balance shall be refunded to the taxpayer.

3447 (3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:

3448 (a) that is due and related to a warrant that is outstanding on or after February 16, 1984;
3449 and

3450 (b) in accordance with Subsections (5) and (6).

3451 (4) (a) The amount of an overpayment may be credited against an obligation described
3452 in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the
3453 taxpayer's last-known address or the address on file under Section [~~62A-11-304.4~~] 26B-9-207,
3454 stating:

3455 (i) the amount of child support that is due or past due as of the date of the notice or
3456 other specified date;

3457 (ii) that any overpayment shall be applied to reduce the amount of due or past-due child
3458 support specified in the notice; and

3459 (iii) that the taxpayer may contest the amount of past-due child support specified in the
3460 notice by filing a written request for an adjudicative proceeding with the office within 15 days
3461 of the notice being sent.

3462 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3463 Office of Recovery Services shall establish rules to implement this Subsection (4), including
3464 procedures, in accordance with the other provisions of this section, to ensure:

3465 (i) prompt reimbursement to a taxpayer of any amount of an overpayment that was
3466 credited against a child support obligation in error; and

3467 (ii) prompt distribution of properly credited funds to the obligee parent.

3468 (5) The amount of an overpayment may be credited against bail described in

3469 Subsection (1)(c) if:

3470 (a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail,

3471 appear, or otherwise satisfy the terms of a citation, summons, or court order; and

3472 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been

3473 sent to the taxpayer's current address on file with the commission.

3474 (6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that

3475 issued the warrant of arrest.

3476 (ii) The clerk of the court is authorized to endorse the check or commission warrant of

3477 payment on behalf of the payees and deposit the money in the court treasury.

3478 (b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the

3479 warrant for arrest of the taxpayer if:

3480 (A) the case is a case for which a personal appearance of the taxpayer is not required;

3481 and

3482 (B) the dollar amount of the overpayment represents the full dollar amount of bail.

3483 (ii) In a case except for a case described in Subsection (6)(b)(i):

3484 (A) the court receiving the overpayment applied as bail is not required to order the

3485 withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

3486 (B) the taxpayer may be arrested on the warrant.

3487 (c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to

3488 resolve the warrant within 40 days after the notice is sent under Subsection (5)(b), the

3489 overpayment applied as bail is forfeited.

3490 (ii) A court may issue another warrant or allow the original warrant to remain in force

3491 if:

3492 (A) the taxpayer has not complied with an order of the court;

3493 (B) the taxpayer has failed to appear and respond to a criminal charge for which a

3494 personal appearance is required; or

3495 (C) the taxpayer has paid partial but not full bail in a case for which a personal

3496 appearance is not required.

3497 (d) If the alleged violations named in a warrant are later resolved in favor of the

3498 taxpayer, the bail amount shall be remitted to the taxpayer.

3499 (7) The fine and bail forfeiture provisions of this section apply to all warrants, fines,
3500 fees, and surcharges issued in cases charging a taxpayer with a felony, a misdemeanor, or an
3501 infraction described in this section, which are outstanding on or after February 16, 1984.

3502 (8) If the amount allowed as a credit for tax withheld from a taxpayer exceeds the tax
3503 to which the credit relates, the excess is considered an overpayment.

3504 (9) (a) Subject to Subsection (9)(b), a taxpayer shall claim a credit or refund of an
3505 overpayment that is attributable to a net operating loss carry back or carry forward within three
3506 years after the day on which the return for the taxable year of the net operating loss is due.

3507 (b) The three-year period described in Subsection (9)(a) shall be extended by any
3508 extension of time provided in statute for filing the return described in Subsection (9)(a).

3509 (10) If there is no tax liability for a period in which an amount is paid under this
3510 chapter, the amount is an overpayment.

3511 (11) If a tax under this chapter is assessed or collected after the expiration of the
3512 applicable period of limitation, that amount is an overpayment.

3513 (12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within
3514 two years after the day on which a notice of change, notice of correction, or amended return is
3515 required to be filed with the commission if the taxpayer is required to:

3516 (i) report a change or correction in income reported on the taxpayer's federal income
3517 tax return;

3518 (ii) report a change or correction that is treated in the same manner as if the change or
3519 correction were an overpayment for federal income tax purposes; or

3520 (iii) file an amended return with the commission.

3521 (b) If a report or amended return is not filed within 90 days after the day on which the
3522 report or amended return is due, interest on any resulting refund or credit ceases to accrue after
3523 the 90-day period.

3524 (c) The amount of the credit or refund may not exceed the amount of the reduction in
3525 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
3526 federal income tax return.

3527 (d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the
3528 amount or the time within which a claim for credit or refund may be filed.

3529 (13) A credit or refund may not be allowed or made if an overpayment is less than \$1.

3530 (14) In the case of an overpayment of tax by an employer under Part 4, Withholding of
3531 Tax, an employer shall receive a refund or credit only to the extent that the amount of the
3532 overpayment is not deducted and withheld from wages under this chapter.

3533 (15) (a) If a taxpayer that is allowed a refund under this chapter dies, the commission
3534 may make payment to the personal representative of the taxpayer's estate.

3535 (b) If there is no personal representative of the taxpayer's estate, the commission may
3536 make payment to those persons that establish entitlement to inherit the property of the decedent
3537 in the proportions established in Title 75, Utah Uniform Probate Code.

3538 (16) If an overpayment relates to a change in net income described in Subsection
3539 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the
3540 period within which a deficiency may be assessed.

3541 (17) An overpayment of a tax imposed by this chapter shall accrue interest at the rate
3542 and in the manner prescribed in Section 59-1-402.

3543 (18) A pass-through entity may claim a refund of qualifying excess withholding in
3544 accordance with Section 59-10-1403.3 in lieu of a pass-through entity taxpayer claiming a tax
3545 credit under Section 59-7-614.4 or Section 59-10-1103.

3546 Section 56. Section 59-10-1004 is amended to read:

3547 **59-10-1004. Tax credit for cash contributions to sheltered workshops.**

3548 (1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due
3549 the state under Section 59-10-104 there shall be a nonrefundable tax credit allowed for cash
3550 contributions made by a claimant, estate, or trust within the taxable year to nonprofit
3551 rehabilitation sheltered workshop facilities for persons with a disability operating in Utah that
3552 are certified by the Department of [~~Human Services~~] Health and Human Services as a
3553 qualifying facility.

3554 (2) The allowable tax credit is an amount equal to 50% of the aggregate amount of the
3555 cash contributions to the qualifying rehabilitation facilities, but the allowed tax credit may not
3556 exceed \$200.

3557 (3) The amount of contribution claimed as a tax credit under this section may not also
3558 be claimed as a charitable deduction in determining net taxable income.

3559 Section 57. Section 59-10-1308 is amended to read:

59-10-1308. Children's organ transplants contribution -- Credit to Kurt Oscarson Children's Organ Transplant Account.

(1) Except as provided in Section [59-10-1304](#), a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution to the Kurt Oscarson Children's Organ Transplant Account created by Section [~~26-18a-4~~] [26B-1-311](#).

(2) The commission shall:

(a) determine annually the total amount of contributions designated in accordance with this section; and

(b) credit the amount described in Subsection (2)(a) to the Kurt Oscarson Children's Organ Transplant Account created by Section [~~26-18a-4~~] [26B-1-311](#).

Section 58. Section **59-10-1320** is amended to read:

59-10-1320. Contribution to the Governor's Suicide Prevention Fund.

(1) Except as provided in Section [59-10-1304](#), a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution to the Governor's Suicide Prevention Fund as provided in this part.

(2) The commission shall:

(a) determine annually the total amount of contributions designated in accordance with this section; and

(b) credit the amount described in Subsection (2)(a) to the Governor's Suicide Prevention Fund created by Section [~~62A-15-H03~~] [26B-1-325](#).

Section 59. Section **59-12-102** is amended to read:

59-12-102. Definitions.

As used in this chapter:

(1) "800 service" means a telecommunications service that:

(a) allows a caller to dial a toll-free number without incurring a charge for the call; and

(b) is typically marketed:

(i) under the name 800 toll-free calling;

(ii) under the name 855 toll-free calling;

(iii) under the name 866 toll-free calling;

- 3591 (iv) under the name 877 toll-free calling;
- 3592 (v) under the name 888 toll-free calling; or
- 3593 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
- 3594 Federal Communications Commission.
- 3595 (2) (a) "900 service" means an inbound toll telecommunications service that:
- 3596 (i) a subscriber purchases;
- 3597 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
- 3598 the subscriber's:
- 3599 (A) prerecorded announcement; or
- 3600 (B) live service; and
- 3601 (iii) is typically marketed:
- 3602 (A) under the name 900 service; or
- 3603 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
- 3604 Communications Commission.
- 3605 (b) "900 service" does not include a charge for:
- 3606 (i) a collection service a seller of a telecommunications service provides to a
- 3607 subscriber; or
- 3608 (ii) the following a subscriber sells to the subscriber's customer:
- 3609 (A) a product; or
- 3610 (B) a service.
- 3611 (3) (a) "Admission or user fees" includes season passes.
- 3612 (b) "Admission or user fees" does not include:
- 3613 (i) annual membership dues to private organizations; or
- 3614 (ii) a lesson, including a lesson that involves as part of the lesson equipment or a
- 3615 facility listed in Subsection [59-12-103](#)(1)(f).
- 3616 (4) "Affiliate" or "affiliated person" means a person that, with respect to another
- 3617 person:
- 3618 (a) has an ownership interest of more than 5%, whether direct or indirect, in that other
- 3619 person; or
- 3620 (b) is related to the other person because a third person, or a group of third persons who
- 3621 are affiliated persons with respect to each other, holds an ownership interest of more than 5%,

3622 whether direct or indirect, in the related persons.

3623 (5) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
3624 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
3625 Agreement after November 12, 2002.

3626 (6) "Agreement combined tax rate" means the sum of the tax rates:

3627 (a) listed under Subsection (7); and

3628 (b) that are imposed within a local taxing jurisdiction.

3629 (7) "Agreement sales and use tax" means a tax imposed under:

3630 (a) Subsection 59-12-103(2)(a)(i)(A);

3631 (b) Subsection 59-12-103(2)(b)(i);

3632 (c) Subsection 59-12-103(2)(c)(i);

3633 (d) Subsection 59-12-103(2)(d);

3634 (e) Subsection 59-12-103(2)(e)(i)(A)(I);

3635 (f) Section 59-12-204;

3636 (g) Section 59-12-401;

3637 (h) Section 59-12-402;

3638 (i) Section 59-12-402.1;

3639 (j) Section 59-12-703;

3640 (k) Section 59-12-802;

3641 (l) Section 59-12-804;

3642 (m) Section 59-12-1102;

3643 (n) Section 59-12-1302;

3644 (o) Section 59-12-1402;

3645 (p) Section 59-12-1802;

3646 (q) Section 59-12-2003;

3647 (r) Section 59-12-2103;

3648 (s) Section 59-12-2213;

3649 (t) Section 59-12-2214;

3650 (u) Section 59-12-2215;

3651 (v) Section 59-12-2216;

3652 (w) Section 59-12-2217;

- 3653 (x) Section 59-12-2218;
3654 (y) Section 59-12-2219; or
3655 (z) Section 59-12-2220.
- 3656 (8) "Aircraft" means the same as that term is defined in Section 72-10-102.
3657 (9) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
3658 (a) except for:
3659 (i) an airline as defined in Section 59-2-102; or
3660 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
3661 includes a corporation that is qualified to do business but is not otherwise doing business in the
3662 state, of an airline; and
3663 (b) that has the workers, expertise, and facilities to perform the following, regardless of
3664 whether the business entity performs the following in this state:
3665 (i) check, diagnose, overhaul, and repair:
3666 (A) an onboard system of a fixed wing turbine powered aircraft; and
3667 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
3668 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
3669 engine;
3670 (iii) perform at least the following maintenance on a fixed wing turbine powered
3671 aircraft:
3672 (A) an inspection;
3673 (B) a repair, including a structural repair or modification;
3674 (C) changing landing gear; and
3675 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
3676 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
3677 completely apply new paint to the fixed wing turbine powered aircraft; and
3678 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
3679 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
3680 authority that certifies the fixed wing turbine powered aircraft.
- 3681 (10) "Alcoholic beverage" means a beverage that:
3682 (a) is suitable for human consumption; and
3683 (b) contains .5% or more alcohol by volume.

- 3684 (11) "Alternative energy" means:
- 3685 (a) biomass energy;
- 3686 (b) geothermal energy;
- 3687 (c) hydroelectric energy;
- 3688 (d) solar energy;
- 3689 (e) wind energy; or
- 3690 (f) energy that is derived from:
- 3691 (i) coal-to-liquids;
- 3692 (ii) nuclear fuel;
- 3693 (iii) oil-impregnated diatomaceous earth;
- 3694 (iv) oil sands;
- 3695 (v) oil shale;
- 3696 (vi) petroleum coke; or
- 3697 (vii) waste heat from:
- 3698 (A) an industrial facility; or
- 3699 (B) a power station in which an electric generator is driven through a process in which
- 3700 water is heated, turns into steam, and spins a steam turbine.
- 3701 (12) (a) Subject to Subsection (12)(b), "alternative energy electricity production
- 3702 facility" means a facility that:
- 3703 (i) uses alternative energy to produce electricity; and
- 3704 (ii) has a production capacity of two megawatts or greater.
- 3705 (b) A facility is an alternative energy electricity production facility regardless of
- 3706 whether the facility is:
- 3707 (i) connected to an electric grid; or
- 3708 (ii) located on the premises of an electricity consumer.
- 3709 (13) (a) "Ancillary service" means a service associated with, or incidental to, the
- 3710 provision of telecommunications service.
- 3711 (b) "Ancillary service" includes:
- 3712 (i) a conference bridging service;
- 3713 (ii) a detailed communications billing service;
- 3714 (iii) directory assistance;

3715 (iv) a vertical service; or

3716 (v) a voice mail service.

3717 (14) "Area agency on aging" means the same as that term is defined in Section

3718 ~~[62A-3-101]~~ [26B-6-101](#).

3719 (15) "Assisted amusement device" means an amusement device, skill device, or ride
3720 device that is started and stopped by an individual:

3721 (a) who is not the purchaser or renter of the right to use or operate the amusement
3722 device, skill device, or ride device; and

3723 (b) at the direction of the seller of the right to use the amusement device, skill device,
3724 or ride device.

3725 (16) "Assisted cleaning or washing of tangible personal property" means cleaning or
3726 washing of tangible personal property if the cleaning or washing labor is primarily performed
3727 by an individual:

3728 (a) who is not the purchaser of the cleaning or washing of the tangible personal
3729 property; and

3730 (b) at the direction of the seller of the cleaning or washing of the tangible personal
3731 property.

3732 (17) "Authorized carrier" means:

3733 (a) in the case of vehicles operated over public highways, the holder of credentials
3734 indicating that the vehicle is or will be operated pursuant to both the International Registration
3735 Plan and the International Fuel Tax Agreement;

3736 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
3737 certificate or air carrier's operating certificate; or

3738 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
3739 stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling
3740 stock in more than one state.

3741 (18) (a) Except as provided in Subsection (18)(b), "biomass energy" means any of the
3742 following that is used as the primary source of energy to produce fuel or electricity:

3743 (i) material from a plant or tree; or

3744 (ii) other organic matter that is available on a renewable basis, including:

3745 (A) slash and brush from forests and woodlands;

3746 (B) animal waste;
 3747 (C) waste vegetable oil;
 3748 (D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of
 3749 wastewater residuals, or through the conversion of a waste material through a nonincineration,
 3750 thermal conversion process;
 3751 (E) aquatic plants; and
 3752 (F) agricultural products.
 3753 (b) "Biomass energy" does not include:
 3754 (i) black liquor; or
 3755 (ii) treated woods.
 3756 (19) (a) "Bundled transaction" means the sale of two or more items of tangible personal
 3757 property, products, or services if the tangible personal property, products, or services are:
 3758 (i) distinct and identifiable; and
 3759 (ii) sold for one nonitemized price.
 3760 (b) "Bundled transaction" does not include:
 3761 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
 3762 the basis of the selection by the purchaser of the items of tangible personal property included in
 3763 the transaction;
 3764 (ii) the sale of real property;
 3765 (iii) the sale of services to real property;
 3766 (iv) the retail sale of tangible personal property and a service if:
 3767 (A) the tangible personal property:
 3768 (I) is essential to the use of the service; and
 3769 (II) is provided exclusively in connection with the service; and
 3770 (B) the service is the true object of the transaction;
 3771 (v) the retail sale of two services if:
 3772 (A) one service is provided that is essential to the use or receipt of a second service;
 3773 (B) the first service is provided exclusively in connection with the second service; and
 3774 (C) the second service is the true object of the transaction;
 3775 (vi) a transaction that includes tangible personal property or a product subject to
 3776 taxation under this chapter and tangible personal property or a product that is not subject to

3777 taxation under this chapter if the:

3778 (A) seller's purchase price of the tangible personal property or product subject to
3779 taxation under this chapter is de minimis; or

3780 (B) seller's sales price of the tangible personal property or product subject to taxation
3781 under this chapter is de minimis; and

3782 (vii) the retail sale of tangible personal property that is not subject to taxation under
3783 this chapter and tangible personal property that is subject to taxation under this chapter if:

3784 (A) that retail sale includes:

3785 (I) food and food ingredients;

3786 (II) a drug;

3787 (III) durable medical equipment;

3788 (IV) mobility enhancing equipment;

3789 (V) an over-the-counter drug;

3790 (VI) a prosthetic device; or

3791 (VII) a medical supply; and

3792 (B) subject to Subsection (19)(f):

3793 (I) the seller's purchase price of the tangible personal property subject to taxation under
3794 this chapter is 50% or less of the seller's total purchase price of that retail sale; or

3795 (II) the seller's sales price of the tangible personal property subject to taxation under
3796 this chapter is 50% or less of the seller's total sales price of that retail sale.

3797 (c) (i) For purposes of Subsection (19)(a)(i), tangible personal property, a product, or a
3798 service that is distinct and identifiable does not include:

3799 (A) packaging that:

3800 (I) accompanies the sale of the tangible personal property, product, or service; and

3801 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
3802 service;

3803 (B) tangible personal property, a product, or a service provided free of charge with the
3804 purchase of another item of tangible personal property, a product, or a service; or

3805 (C) an item of tangible personal property, a product, or a service included in the
3806 definition of "purchase price."

3807 (ii) For purposes of Subsection (19)(c)(i)(B), an item of tangible personal property, a

3808 product, or a service is provided free of charge with the purchase of another item of tangible
3809 personal property, a product, or a service if the sales price of the purchased item of tangible
3810 personal property, product, or service does not vary depending on the inclusion of the tangible
3811 personal property, product, or service provided free of charge.

3812 (d) (i) For purposes of Subsection (19)(a)(ii), property sold for one nonitemized price
3813 does not include a price that is separately identified by tangible personal property, product, or
3814 service on the following, regardless of whether the following is in paper format or electronic
3815 format:

3816 (A) a binding sales document; or

3817 (B) another supporting sales-related document that is available to a purchaser.

3818 (ii) For purposes of Subsection (19)(d)(i), a binding sales document or another
3819 supporting sales-related document that is available to a purchaser includes:

3820 (A) a bill of sale;

3821 (B) a contract;

3822 (C) an invoice;

3823 (D) a lease agreement;

3824 (E) a periodic notice of rates and services;

3825 (F) a price list;

3826 (G) a rate card;

3827 (H) a receipt; or

3828 (I) a service agreement.

3829 (e) (i) For purposes of Subsection (19)(b)(vi), the sales price of tangible personal
3830 property or a product subject to taxation under this chapter is de minimis if:

3831 (A) the seller's purchase price of the tangible personal property or product is 10% or
3832 less of the seller's total purchase price of the bundled transaction; or

3833 (B) the seller's sales price of the tangible personal property or product is 10% or less of
3834 the seller's total sales price of the bundled transaction.

3835 (ii) For purposes of Subsection (19)(b)(vi), a seller:

3836 (A) shall use the seller's purchase price or the seller's sales price to determine if the
3837 purchase price or sales price of the tangible personal property or product subject to taxation
3838 under this chapter is de minimis; and

3839 (B) may not use a combination of the seller's purchase price and the seller's sales price
3840 to determine if the purchase price or sales price of the tangible personal property or product
3841 subject to taxation under this chapter is de minimis.

3842 (iii) For purposes of Subsection (19)(b)(vi), a seller shall use the full term of a service
3843 contract to determine if the sales price of tangible personal property or a product is de minimis.

3844 (f) For purposes of Subsection (19)(b)(vii)(B), a seller may not use a combination of
3845 the seller's purchase price and the seller's sales price to determine if tangible personal property
3846 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
3847 price of that retail sale.

3848 (20) "Certified automated system" means software certified by the governing board of
3849 the agreement that:

3850 (a) calculates the agreement sales and use tax imposed within a local taxing
3851 jurisdiction:

3852 (i) on a transaction; and

3853 (ii) in the states that are members of the agreement;

3854 (b) determines the amount of agreement sales and use tax to remit to a state that is a
3855 member of the agreement; and

3856 (c) maintains a record of the transaction described in Subsection (20)(a)(i).

3857 (21) "Certified service provider" means an agent certified:

3858 (a) by the governing board of the agreement; and

3859 (b) to perform a seller's sales and use tax functions for an agreement sales and use tax,
3860 as outlined in the contract between the governing board of the agreement and the certified
3861 service provider, other than the seller's obligation under Section 59-12-124 to remit a tax on the
3862 seller's own purchases.

3863 (22) (a) Subject to Subsection (22)(b), "clothing" means all human wearing apparel
3864 suitable for general use.

3865 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3866 commission shall make rules:

3867 (i) listing the items that constitute "clothing"; and

3868 (ii) that are consistent with the list of items that constitute "clothing" under the
3869 agreement.

3870 (23) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

3871 (24) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
3872 fuels that does not constitute industrial use under Subsection (57) or residential use under
3873 Subsection (112).

3874 (25) (a) "Common carrier" means a person engaged in or transacting the business of
3875 transporting passengers, freight, merchandise, or other property for hire within this state.

3876 (b) (i) "Common carrier" does not include a person that, at the time the person is
3877 traveling to or from that person's place of employment, transports a passenger to or from the
3878 passenger's place of employment.

3879 (ii) For purposes of Subsection (25)(b)(i), in accordance with Title 63G, Chapter 3,
3880 Utah Administrative Rulemaking Act, the commission may make rules defining what
3881 constitutes a person's place of employment.

3882 (c) "Common carrier" does not include a person that provides transportation network
3883 services, as defined in Section [13-51-102](#).

3884 (26) "Component part" includes:

3885 (a) poultry, dairy, and other livestock feed, and their components;

3886 (b) baling ties and twine used in the baling of hay and straw;

3887 (c) fuel used for providing temperature control of orchards and commercial
3888 greenhouses doing a majority of their business in wholesale sales, and for providing power for
3889 off-highway type farm machinery; and

3890 (d) feed, seeds, and seedlings.

3891 (27) "Computer" means an electronic device that accepts information:

3892 (a) (i) in digital form; or

3893 (ii) in a form similar to digital form; and

3894 (b) manipulates that information for a result based on a sequence of instructions.

3895 (28) "Computer software" means a set of coded instructions designed to cause:

3896 (a) a computer to perform a task; or

3897 (b) automatic data processing equipment to perform a task.

3898 (29) "Computer software maintenance contract" means a contract that obligates a seller
3899 of computer software to provide a customer with:

3900 (a) future updates or upgrades to computer software;

- 3901 (b) support services with respect to computer software; or
3902 (c) a combination of Subsections (29)(a) and (b).
- 3903 (30) (a) "Conference bridging service" means an ancillary service that links two or
3904 more participants of an audio conference call or video conference call.
- 3905 (b) "Conference bridging service" may include providing a telephone number as part of
3906 the ancillary service described in Subsection (30)(a).
- 3907 (c) "Conference bridging service" does not include a telecommunications service used
3908 to reach the ancillary service described in Subsection (30)(a).
- 3909 (31) "Construction materials" means any tangible personal property that will be
3910 converted into real property.
- 3911 (32) "Delivered electronically" means delivered to a purchaser by means other than
3912 tangible storage media.
- 3913 (33) (a) "Delivery charge" means a charge:
3914 (i) by a seller of:
3915 (A) tangible personal property;
3916 (B) a product transferred electronically; or
3917 (C) a service; and
3918 (ii) for preparation and delivery of the tangible personal property, product transferred
3919 electronically, or services described in Subsection (33)(a)(i) to a location designated by the
3920 purchaser.
- 3921 (b) "Delivery charge" includes a charge for the following:
3922 (i) transportation;
3923 (ii) shipping;
3924 (iii) postage;
3925 (iv) handling;
3926 (v) crating; or
3927 (vi) packing.
- 3928 (34) "Detailed telecommunications billing service" means an ancillary service of
3929 separately stating information pertaining to individual calls on a customer's billing statement.
- 3930 (35) "Dietary supplement" means a product, other than tobacco, that:
3931 (a) is intended to supplement the diet;

- 3932 (b) contains one or more of the following dietary ingredients:
- 3933 (i) a vitamin;
- 3934 (ii) a mineral;
- 3935 (iii) an herb or other botanical;
- 3936 (iv) an amino acid;
- 3937 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 3938 dietary intake; or
- 3939 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 3940 described in Subsections (35)(b)(i) through (v);
- 3941 (c) (i) except as provided in Subsection (35)(c)(ii), is intended for ingestion in:
- 3942 (A) tablet form;
- 3943 (B) capsule form;
- 3944 (C) powder form;
- 3945 (D) softgel form;
- 3946 (E) gelcap form; or
- 3947 (F) liquid form; or
- 3948 (ii) if the product is not intended for ingestion in a form described in Subsections
- 3949 (35)(c)(i)(A) through (F), is not represented:
- 3950 (A) as conventional food; and
- 3951 (B) for use as a sole item of:
- 3952 (I) a meal; or
- 3953 (II) the diet; and
- 3954 (d) is required to be labeled as a dietary supplement:
- 3955 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 3956 (ii) as required by 21 C.F.R. Sec. 101.36.
- 3957 (36) (a) "Digital audio work" means a work that results from the fixation of a series of
- 3958 musical, spoken, or other sounds.
- 3959 (b) "Digital audio work" includes a ringtone.
- 3960 (37) "Digital audio-visual work" means a series of related images which, when shown
- 3961 in succession, imparts an impression of motion, together with accompanying sounds, if any.
- 3962 (38) "Digital book" means a work that is generally recognized in the ordinary and usual

3963 sense as a book.

3964 (39) (a) "Direct mail" means printed material delivered or distributed by United States
3965 mail or other delivery service:

3966 (i) to:

3967 (A) a mass audience; or

3968 (B) addressees on a mailing list provided:

3969 (I) by a purchaser of the mailing list; or

3970 (II) at the discretion of the purchaser of the mailing list; and

3971 (ii) if the cost of the printed material is not billed directly to the recipients.

3972 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
3973 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

3974 (c) "Direct mail" does not include multiple items of printed material delivered to a
3975 single address.

3976 (40) "Directory assistance" means an ancillary service of providing:

3977 (a) address information; or

3978 (b) telephone number information.

3979 (41) (a) "Disposable home medical equipment or supplies" means medical equipment
3980 or supplies that:

3981 (i) cannot withstand repeated use; and

3982 (ii) are purchased by, for, or on behalf of a person other than:

3983 (A) a health care facility as defined in Section ~~[26-21-2]~~ [26B-2-201](#);

3984 (B) a health care provider as defined in Section [78B-3-403](#);

3985 (C) an office of a health care provider described in Subsection (41)(a)(ii)(B); or

3986 (D) a person similar to a person described in Subsections (41)(a)(ii)(A) through (C).

3987 (b) "Disposable home medical equipment or supplies" does not include:

3988 (i) a drug;

3989 (ii) durable medical equipment;

3990 (iii) a hearing aid;

3991 (iv) a hearing aid accessory;

3992 (v) mobility enhancing equipment; or

3993 (vi) tangible personal property used to correct impaired vision, including:

- 3994 (A) eyeglasses; or
 3995 (B) contact lenses.
 3996 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 3997 commission may by rule define what constitutes medical equipment or supplies.
 3998 (42) "Drilling equipment manufacturer" means a facility:
 3999 (a) located in the state;
 4000 (b) with respect to which 51% or more of the manufacturing activities of the facility
 4001 consist of manufacturing component parts of drilling equipment;
 4002 (c) that uses pressure of 800,000 or more pounds per square inch as part of the
 4003 manufacturing process; and
 4004 (d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the
 4005 manufacturing process.
 4006 (43) (a) "Drug" means a compound, substance, or preparation, or a component of a
 4007 compound, substance, or preparation that is:
 4008 (i) recognized in:
 4009 (A) the official United States Pharmacopoeia;
 4010 (B) the official Homeopathic Pharmacopoeia of the United States;
 4011 (C) the official National Formulary; or
 4012 (D) a supplement to a publication listed in Subsections (43)(a)(i)(A) through (C);
 4013 (ii) intended for use in the:
 4014 (A) diagnosis of disease;
 4015 (B) cure of disease;
 4016 (C) mitigation of disease;
 4017 (D) treatment of disease; or
 4018 (E) prevention of disease; or
 4019 (iii) intended to affect:
 4020 (A) the structure of the body; or
 4021 (B) any function of the body.
 4022 (b) "Drug" does not include:
 4023 (i) food and food ingredients;
 4024 (ii) a dietary supplement;

- 4025 (iii) an alcoholic beverage; or
4026 (iv) a prosthetic device.
- 4027 (44) (a) Except as provided in Subsection (44)(c), "durable medical equipment" means
4028 equipment that:
- 4029 (i) can withstand repeated use;
4030 (ii) is primarily and customarily used to serve a medical purpose;
4031 (iii) generally is not useful to a person in the absence of illness or injury; and
4032 (iv) is not worn in or on the body.
- 4033 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
4034 equipment described in Subsection (44)(a).
- 4035 (c) "Durable medical equipment" does not include mobility enhancing equipment.
- 4036 (45) "Electronic" means:
- 4037 (a) relating to technology; and
4038 (b) having:
- 4039 (i) electrical capabilities;
4040 (ii) digital capabilities;
4041 (iii) magnetic capabilities;
4042 (iv) wireless capabilities;
4043 (v) optical capabilities;
4044 (vi) electromagnetic capabilities; or
4045 (vii) capabilities similar to Subsections (45)(b)(i) through (vi).
- 4046 (46) "Electronic financial payment service" means an establishment:
- 4047 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
4048 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
4049 federal Executive Office of the President, Office of Management and Budget; and
4050 (b) that performs electronic financial payment services.
- 4051 (47) "Employee" means the same as that term is defined in Section [59-10-401](#).
- 4052 (48) "Fixed guideway" means a public transit facility that uses and occupies:
- 4053 (a) rail for the use of public transit; or
4054 (b) a separate right-of-way for the use of public transit.
- 4055 (49) "Fixed wing turbine powered aircraft" means an aircraft that:

- 4056 (a) is powered by turbine engines;
4057 (b) operates on jet fuel; and
4058 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 4059 (50) "Fixed wireless service" means a telecommunications service that provides radio
4060 communication between fixed points.
- 4061 (51) (a) "Food and food ingredients" means substances:
4062 (i) regardless of whether the substances are in:
4063 (A) liquid form;
4064 (B) concentrated form;
4065 (C) solid form;
4066 (D) frozen form;
4067 (E) dried form; or
4068 (F) dehydrated form; and
4069 (ii) that are:
4070 (A) sold for:
4071 (I) ingestion by humans; or
4072 (II) chewing by humans; and
4073 (B) consumed for the substance's:
4074 (I) taste; or
4075 (II) nutritional value.
- 4076 (b) "Food and food ingredients" includes an item described in Subsection (96)(b)(iii).
4077 (c) "Food and food ingredients" does not include:
4078 (i) an alcoholic beverage;
4079 (ii) tobacco; or
4080 (iii) prepared food.
- 4081 (52) (a) "Fundraising sales" means sales:
4082 (i) (A) made by a school; or
4083 (B) made by a school student;
4084 (ii) that are for the purpose of raising funds for the school to purchase equipment,
4085 materials, or provide transportation; and
4086 (iii) that are part of an officially sanctioned school activity.

4087 (b) For purposes of Subsection (52)(a)(iii), "officially sanctioned school activity"
4088 means a school activity:

4089 (i) that is conducted in accordance with a formal policy adopted by the school or school
4090 district governing the authorization and supervision of fundraising activities;

4091 (ii) that does not directly or indirectly compensate an individual teacher or other
4092 educational personnel by direct payment, commissions, or payment in kind; and

4093 (iii) the net or gross revenues from which are deposited in a dedicated account
4094 controlled by the school or school district.

4095 (53) "Geothermal energy" means energy contained in heat that continuously flows
4096 outward from the earth that is used as the sole source of energy to produce electricity.

4097 (54) "Governing board of the agreement" means the governing board of the agreement
4098 that is:

4099 (a) authorized to administer the agreement; and

4100 (b) established in accordance with the agreement.

4101 (55) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

4102 (i) the executive branch of the state, including all departments, institutions, boards,
4103 divisions, bureaus, offices, commissions, and committees;

4104 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
4105 Administrative Office of the Courts, and similar administrative units in the judicial branch;

4106 (iii) the legislative branch of the state, including the House of Representatives, the
4107 Senate, the Legislative Printing Office, the Office of Legislative Research and General
4108 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
4109 Analyst;

4110 (iv) the National Guard;

4111 (v) an independent entity as defined in Section 63E-1-102; or

4112 (vi) a political subdivision as defined in Section 17B-1-102.

4113 (b) "Governmental entity" does not include the state systems of public and higher
4114 education, including:

4115 (i) a school;

4116 (ii) the State Board of Education;

4117 (iii) the Utah Board of Higher Education; or

- 4118 (iv) an institution of higher education described in Section [53B-1-102](#).
- 4119 (56) "Hydroelectric energy" means water used as the sole source of energy to produce
4120 electricity.
- 4121 (57) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
4122 other fuels:
- 4123 (a) in mining or extraction of minerals;
- 4124 (b) in agricultural operations to produce an agricultural product up to the time of
4125 harvest or placing the agricultural product into a storage facility, including:
- 4126 (i) commercial greenhouses;
- 4127 (ii) irrigation pumps;
- 4128 (iii) farm machinery;
- 4129 (iv) implements of husbandry as defined in Section [41-1a-102](#) that are not registered
4130 under Title 41, Chapter 1a, Part 2, Registration; and
- 4131 (v) other farming activities;
- 4132 (c) in manufacturing tangible personal property at an establishment described in:
- 4133 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
4134 the federal Executive Office of the President, Office of Management and Budget; or
- 4135 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North
4136 American Industry Classification System of the federal Executive Office of the President,
4137 Office of Management and Budget;
- 4138 (d) by a scrap recycler if:
- 4139 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
4140 one or more of the following items into prepared grades of processed materials for use in new
4141 products:
- 4142 (A) iron;
- 4143 (B) steel;
- 4144 (C) nonferrous metal;
- 4145 (D) paper;
- 4146 (E) glass;
- 4147 (F) plastic;
- 4148 (G) textile; or

4149 (H) rubber; and
4150 (ii) the new products under Subsection (57)(d)(i) would otherwise be made with
4151 nonrecycled materials; or
4152 (e) in producing a form of energy or steam described in Subsection 54-2-1(3)(a) by a
4153 cogeneration facility as defined in Section 54-2-1.
4154 (58) (a) Except as provided in Subsection (58)(b), "installation charge" means a charge
4155 for installing:
4156 (i) tangible personal property; or
4157 (ii) a product transferred electronically.
4158 (b) "Installation charge" does not include a charge for:
4159 (i) repairs or renovations of:
4160 (A) tangible personal property; or
4161 (B) a product transferred electronically; or
4162 (ii) attaching tangible personal property or a product transferred electronically:
4163 (A) to other tangible personal property; and
4164 (B) as part of a manufacturing or fabrication process.
4165 (59) "Institution of higher education" means an institution of higher education listed in
4166 Section 53B-2-101.
4167 (60) (a) "Lease" or "rental" means a transfer of possession or control of tangible
4168 personal property or a product transferred electronically for:
4169 (i) (A) a fixed term; or
4170 (B) an indeterminate term; and
4171 (ii) consideration.
4172 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
4173 amount of consideration may be increased or decreased by reference to the amount realized
4174 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
4175 Code.
4176 (c) "Lease" or "rental" does not include:
4177 (i) a transfer of possession or control of property under a security agreement or
4178 deferred payment plan that requires the transfer of title upon completion of the required
4179 payments;

4180 (ii) a transfer of possession or control of property under an agreement that requires the
4181 transfer of title:

4182 (A) upon completion of required payments; and

4183 (B) if the payment of an option price does not exceed the greater of:

4184 (I) \$100; or

4185 (II) 1% of the total required payments; or

4186 (iii) providing tangible personal property along with an operator for a fixed period of
4187 time or an indeterminate period of time if the operator is necessary for equipment to perform as
4188 designed.

4189 (d) For purposes of Subsection (60)(c)(iii), an operator is necessary for equipment to
4190 perform as designed if the operator's duties exceed the:

4191 (i) set-up of tangible personal property;

4192 (ii) maintenance of tangible personal property; or

4193 (iii) inspection of tangible personal property.

4194 (61) "Lesson" means a fixed period of time for the duration of which a trained
4195 instructor:

4196 (a) is present with a student in person or by video; and

4197 (b) actively instructs the student, including by providing observation or feedback.

4198 (62) "Life science establishment" means an establishment in this state that is classified
4199 under the following NAICS codes of the 2007 North American Industry Classification System
4200 of the federal Executive Office of the President, Office of Management and Budget:

4201 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

4202 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
4203 Manufacturing; or

4204 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

4205 (63) "Life science research and development facility" means a facility owned, leased,
4206 or rented by a life science establishment if research and development is performed in 51% or
4207 more of the total area of the facility.

4208 (64) "Load and leave" means delivery to a purchaser by use of a tangible storage media
4209 if the tangible storage media is not physically transferred to the purchaser.

4210 (65) "Local taxing jurisdiction" means a:

- 4211 (a) county that is authorized to impose an agreement sales and use tax;
4212 (b) city that is authorized to impose an agreement sales and use tax; or
4213 (c) town that is authorized to impose an agreement sales and use tax.
- 4214 (66) "Manufactured home" means the same as that term is defined in Section
4215 [15A-1-302](#).
- 4216 (67) "Manufacturing facility" means:
4217 (a) an establishment described in:
4218 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
4219 the federal Executive Office of the President, Office of Management and Budget; or
4220 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North
4221 American Industry Classification System of the federal Executive Office of the President,
4222 Office of Management and Budget;
- 4223 (b) a scrap recycler if:
4224 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
4225 one or more of the following items into prepared grades of processed materials for use in new
4226 products:
4227 (A) iron;
4228 (B) steel;
4229 (C) nonferrous metal;
4230 (D) paper;
4231 (E) glass;
4232 (F) plastic;
4233 (G) textile; or
4234 (H) rubber; and
4235 (ii) the new products under Subsection (67)(b)(i) would otherwise be made with
4236 nonrecycled materials; or
- 4237 (c) a cogeneration facility as defined in Section [54-2-1](#) if the cogeneration facility is
4238 placed in service on or after May 1, 2006.
- 4239 (68) (a) "Marketplace" means a physical or electronic place, platform, or forum where
4240 tangible personal property, a product transferred electronically, or a service is offered for sale.
4241 (b) "Marketplace" includes a store, a booth, an Internet website, a catalog, or a

4242 dedicated sales software application.

4243 (69) (a) "Marketplace facilitator" means a person, including an affiliate of the person,
4244 that enters into a contract, an agreement, or otherwise with sellers, for consideration, to
4245 facilitate the sale of a seller's product through a marketplace that the person owns, operates, or
4246 controls and that directly or indirectly:

4247 (i) does any of the following:

4248 (A) lists, makes available, or advertises tangible personal property, a product
4249 transferred electronically, or a service for sale by a marketplace seller on a marketplace that the
4250 person owns, operates, or controls;

4251 (B) facilitates the sale of a marketplace seller's tangible personal property, product
4252 transferred electronically, or service by transmitting or otherwise communicating an offer or
4253 acceptance of a retail sale between the marketplace seller and a purchaser using the
4254 marketplace;

4255 (C) owns, rents, licenses, makes available, or operates any electronic or physical
4256 infrastructure or any property, process, method, copyright, trademark, or patent that connects a
4257 marketplace seller to a purchaser for the purpose of making a retail sale of tangible personal
4258 property, a product transferred electronically, or a service;

4259 (D) provides a marketplace for making, or otherwise facilitates, a retail sale of tangible
4260 personal property, a product transferred electronically, or a service, regardless of ownership or
4261 control of the tangible personal property, the product transferred electronically, or the service
4262 that is the subject of the retail sale;

4263 (E) provides software development or research and development activities related to
4264 any activity described in this Subsection (69)(a)(i), if the software development or research and
4265 development activity is directly related to the person's marketplace;

4266 (F) provides or offers fulfillment or storage services for a marketplace seller;

4267 (G) sets prices for the sale of tangible personal property, a product transferred
4268 electronically, or a service by a marketplace seller;

4269 (H) provides or offers customer service to a marketplace seller or a marketplace seller's
4270 purchaser or accepts or assists with taking orders, returns, or exchanges of tangible personal
4271 property, a product transferred electronically, or a service sold by a marketplace seller on the
4272 person's marketplace; or

- 4273 (I) brands or otherwise identifies sales as those of the person; and
4274 (ii) does any of the following:
- 4275 (A) collects the sales price or purchase price of a retail sale of tangible personal
4276 property, a product transferred electronically, or a service;
- 4277 (B) provides payment processing services for a retail sale of tangible personal property,
4278 a product transferred electronically, or a service;
- 4279 (C) charges, collects, or otherwise receives a selling fee, listing fee, referral fee, closing
4280 fee, a fee for inserting or making available tangible personal property, a product transferred
4281 electronically, or a service on the person's marketplace, or other consideration for the
4282 facilitation of a retail sale of tangible personal property, a product transferred electronically, or
4283 a service, regardless of ownership or control of the tangible personal property, the product
4284 transferred electronically, or the service that is the subject of the retail sale;
- 4285 (D) through terms and conditions, an agreement, or another arrangement with a third
4286 person, collects payment from a purchase for a retail sale of tangible personal property, a
4287 product transferred electronically, or a service and transmits that payment to the marketplace
4288 seller, regardless of whether the third person receives compensation or other consideration in
4289 exchange for the service; or
- 4290 (E) provides a virtual currency for a purchaser to use to purchase tangible personal
4291 property, a product transferred electronically, or service offered for sale.
- 4292 (b) "Marketplace facilitator" does not include:
- 4293 (i) a person that only provides payment processing services; or
4294 (ii) a person described in Subsection (69)(a) to the extent the person is facilitating a
4295 sale for a seller that is a restaurant as defined in Section [59-12-602](#).
- 4296 (70) "Marketplace seller" means a seller that makes one or more retail sales through a
4297 marketplace that a marketplace facilitator owns, operates, or controls, regardless of whether the
4298 seller is required to be registered to collect and remit the tax under this part.
- 4299 (71) "Member of the immediate family of the producer" means a person who is related
4300 to a producer described in Subsection [59-12-104](#)(20)(a) as a:
- 4301 (a) child or stepchild, regardless of whether the child or stepchild is:
- 4302 (i) an adopted child or adopted stepchild; or
4303 (ii) a foster child or foster stepchild;

- 4304 (b) grandchild or stepgrandchild;
4305 (c) grandparent or stepgrandparent;
4306 (d) nephew or stepnephew;
4307 (e) niece or stepniece;
4308 (f) parent or stepparent;
4309 (g) sibling or stepsibling;
4310 (h) spouse;
4311 (i) person who is the spouse of a person described in Subsections (71)(a) through (g);

4312 or

- 4313 (j) person similar to a person described in Subsections (71)(a) through (i) as
4314 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
4315 Administrative Rulemaking Act.

4316 (72) "Mobile home" means the same as that term is defined in Section [15A-1-302](#).

4317 (73) "Mobile telecommunications service" means the same as that term is defined in
4318 the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

4319 (74) (a) "Mobile wireless service" means a telecommunications service, regardless of
4320 the technology used, if:

- 4321 (i) the origination point of the conveyance, routing, or transmission is not fixed;
4322 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
4323 (iii) the origination point described in Subsection (74)(a)(i) and the termination point
4324 described in Subsection (74)(a)(ii) are not fixed.

4325 (b) "Mobile wireless service" includes a telecommunications service that is provided
4326 by a commercial mobile radio service provider.

4327 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
4328 commission may by rule define "commercial mobile radio service provider."

4329 (75) (a) Except as provided in Subsection (75)(c), "mobility enhancing equipment"
4330 means equipment that is:

- 4331 (i) primarily and customarily used to provide or increase the ability to move from one
4332 place to another;
4333 (ii) appropriate for use in a:
4334 (A) home; or

4335 (B) motor vehicle; and
4336 (iii) not generally used by persons with normal mobility.
4337 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
4338 the equipment described in Subsection (75)(a).
4339 (c) "Mobility enhancing equipment" does not include:
4340 (i) a motor vehicle;
4341 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
4342 vehicle manufacturer;
4343 (iii) durable medical equipment; or
4344 (iv) a prosthetic device.
4345 (76) "Model 1 seller" means a seller registered under the agreement that has selected a
4346 certified service provider as the seller's agent to perform the seller's sales and use tax functions
4347 for agreement sales and use taxes, as outlined in the contract between the governing board of
4348 the agreement and the certified service provider, other than the seller's obligation under Section
4349 [59-12-124](#) to remit a tax on the seller's own purchases.
4350 (77) "Model 2 seller" means a seller registered under the agreement that:
4351 (a) except as provided in Subsection (77)(b), has selected a certified automated system
4352 to perform the seller's sales tax functions for agreement sales and use taxes; and
4353 (b) retains responsibility for remitting all of the sales tax:
4354 (i) collected by the seller; and
4355 (ii) to the appropriate local taxing jurisdiction.
4356 (78) (a) Subject to Subsection (78)(b), "model 3 seller" means a seller registered under
4357 the agreement that has:
4358 (i) sales in at least five states that are members of the agreement;
4359 (ii) total annual sales revenues of at least \$500,000,000;
4360 (iii) a proprietary system that calculates the amount of tax:
4361 (A) for an agreement sales and use tax; and
4362 (B) due to each local taxing jurisdiction; and
4363 (iv) entered into a performance agreement with the governing board of the agreement.
4364 (b) For purposes of Subsection (78)(a), "model 3 seller" includes an affiliated group of
4365 sellers using the same proprietary system.

4366 (79) "Model 4 seller" means a seller that is registered under the agreement and is not a
4367 model 1 seller, model 2 seller, or model 3 seller.

4368 (80) "Modular home" means a modular unit as defined in Section [15A-1-302](#).

4369 (81) "Motor vehicle" means the same as that term is defined in Section [41-1a-102](#).

4370 (82) "Oil sands" means impregnated bituminous sands that:

4371 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
4372 other hydrocarbons, or otherwise treated;

4373 (b) yield mixtures of liquid hydrocarbon; and

4374 (c) require further processing other than mechanical blending before becoming finished
4375 petroleum products.

4376 (83) "Oil shale" means a group of fine black to dark brown shales containing kerogen
4377 material that yields petroleum upon heating and distillation.

4378 (84) "Optional computer software maintenance contract" means a computer software
4379 maintenance contract that a customer is not obligated to purchase as a condition to the retail
4380 sale of computer software.

4381 (85) (a) "Other fuels" means products that burn independently to produce heat or
4382 energy.

4383 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
4384 personal property.

4385 (86) (a) "Paging service" means a telecommunications service that provides
4386 transmission of a coded radio signal for the purpose of activating a specific pager.

4387 (b) For purposes of Subsection (86)(a), the transmission of a coded radio signal
4388 includes a transmission by message or sound.

4389 (87) "Pawn transaction" means the same as that term is defined in Section [13-32a-102](#).

4390 (88) "Pawnbroker" means the same as that term is defined in Section [13-32a-102](#).

4391 (89) (a) "Permanently attached to real property" means that for tangible personal
4392 property attached to real property:

4393 (i) the attachment of the tangible personal property to the real property:

4394 (A) is essential to the use of the tangible personal property; and

4395 (B) suggests that the tangible personal property will remain attached to the real
4396 property in the same place over the useful life of the tangible personal property; or

4397 (ii) if the tangible personal property is detached from the real property, the detachment
4398 would:

4399 (A) cause substantial damage to the tangible personal property; or

4400 (B) require substantial alteration or repair of the real property to which the tangible
4401 personal property is attached.

4402 (b) "Permanently attached to real property" includes:

4403 (i) the attachment of an accessory to the tangible personal property if the accessory is:

4404 (A) essential to the operation of the tangible personal property; and

4405 (B) attached only to facilitate the operation of the tangible personal property;

4406 (ii) a temporary detachment of tangible personal property from real property for a
4407 repair or renovation if the repair or renovation is performed where the tangible personal
4408 property and real property are located; or

4409 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
4410 Subsection (89)(c)(iii) or (iv).

4411 (c) "Permanently attached to real property" does not include:

4412 (i) the attachment of portable or movable tangible personal property to real property if
4413 that portable or movable tangible personal property is attached to real property only for:

4414 (A) convenience;

4415 (B) stability; or

4416 (C) for an obvious temporary purpose;

4417 (ii) the detachment of tangible personal property from real property except for the
4418 detachment described in Subsection (89)(b)(ii);

4419 (iii) an attachment of the following tangible personal property to real property if the
4420 attachment to real property is only through a line that supplies water, electricity, gas,
4421 telecommunications, cable, or supplies a similar item as determined by the commission by rule
4422 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

4423 (A) a computer;

4424 (B) a telephone;

4425 (C) a television; or

4426 (D) tangible personal property similar to Subsections (89)(c)(iii)(A) through (C) as
4427 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

4428 Administrative Rulemaking Act; or
4429 (iv) an item listed in Subsection (130)(c).
4430 (90) "Person" includes any individual, firm, partnership, joint venture, association,
4431 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
4432 municipality, district, or other local governmental entity of the state, or any group or
4433 combination acting as a unit.
4434 (91) "Place of primary use":
4435 (a) for telecommunications service other than mobile telecommunications service,
4436 means the street address representative of where the customer's use of the telecommunications
4437 service primarily occurs, which shall be:
4438 (i) the residential street address of the customer; or
4439 (ii) the primary business street address of the customer; or
4440 (b) for mobile telecommunications service, means the same as that term is defined in
4441 the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
4442 (92) (a) "Postpaid calling service" means a telecommunications service a person
4443 obtains by making a payment on a call-by-call basis:
4444 (i) through the use of a:
4445 (A) bank card;
4446 (B) credit card;
4447 (C) debit card; or
4448 (D) travel card; or
4449 (ii) by a charge made to a telephone number that is not associated with the origination
4450 or termination of the telecommunications service.
4451 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
4452 service, that would be a prepaid wireless calling service if the service were exclusively a
4453 telecommunications service.
4454 (93) "Postproduction" means an activity related to the finishing or duplication of a
4455 medium described in Subsection 59-12-104(54)(a).
4456 (94) "Prepaid calling service" means a telecommunications service:
4457 (a) that allows a purchaser access to telecommunications service that is exclusively
4458 telecommunications service;

- 4459 (b) that:
- 4460 (i) is paid for in advance; and
- 4461 (ii) enables the origination of a call using an:
- 4462 (A) access number; or
- 4463 (B) authorization code;
- 4464 (c) that is dialed:
- 4465 (i) manually; or
- 4466 (ii) electronically; and
- 4467 (d) sold in predetermined units or dollars that decline:
- 4468 (i) by a known amount; and
- 4469 (ii) with use.
- 4470 (95) "Prepaid wireless calling service" means a telecommunications service:
- 4471 (a) that provides the right to utilize:
- 4472 (i) mobile wireless service; and
- 4473 (ii) other service that is not a telecommunications service, including:
- 4474 (A) the download of a product transferred electronically;
- 4475 (B) a content service; or
- 4476 (C) an ancillary service;
- 4477 (b) that:
- 4478 (i) is paid for in advance; and
- 4479 (ii) enables the origination of a call using an:
- 4480 (A) access number; or
- 4481 (B) authorization code;
- 4482 (c) that is dialed:
- 4483 (i) manually; or
- 4484 (ii) electronically; and
- 4485 (d) sold in predetermined units or dollars that decline:
- 4486 (i) by a known amount; and
- 4487 (ii) with use.
- 4488 (96) (a) "Prepared food" means:
- 4489 (i) food:

4490 (A) sold in a heated state; or
4491 (B) heated by a seller;
4492 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
4493 item; or
4494 (iii) except as provided in Subsection (96)(c), food sold with an eating utensil provided
4495 by the seller, including a:
4496 (A) plate;
4497 (B) knife;
4498 (C) fork;
4499 (D) spoon;
4500 (E) glass;
4501 (F) cup;
4502 (G) napkin; or
4503 (H) straw.
4504 (b) "Prepared food" does not include:
4505 (i) food that a seller only:
4506 (A) cuts;
4507 (B) repackages; or
4508 (C) pasteurizes; [or]
4509 (ii) (A) the following:
4510 (I) raw egg;
4511 (II) raw fish;
4512 (III) raw meat;
4513 (IV) raw poultry; or
4514 (V) a food containing an item described in Subsections (96)(b)(ii)(A)(I) through (IV);
4515 and
4516 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
4517 Food and Drug Administration's Food Code that a consumer cook the items described in
4518 Subsection (96)(b)(ii)(A) to prevent food borne illness; or
4519 (iii) the following if sold without eating utensils provided by the seller:
4520 (A) food and food ingredients sold by a seller if the seller's proper primary

4521 classification under the 2002 North American Industry Classification System of the federal
4522 Executive Office of the President, Office of Management and Budget, is manufacturing in
4523 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
4524 Manufacturing;

4525 (B) food and food ingredients sold in an unheated state:

4526 (I) by weight or volume; and

4527 (II) as a single item; or

4528 (C) a bakery item, including:

4529 (I) a bagel;

4530 (II) a bar;

4531 (III) a biscuit;

4532 (IV) bread;

4533 (V) a bun;

4534 (VI) a cake;

4535 (VII) a cookie;

4536 (VIII) a croissant;

4537 (IX) a danish;

4538 (X) a donut;

4539 (XI) a muffin;

4540 (XII) a pastry;

4541 (XIII) a pie;

4542 (XIV) a roll;

4543 (XV) a tart;

4544 (XVI) a torte; or

4545 (XVII) a tortilla.

4546 (c) An eating utensil provided by the seller does not include the following used to
4547 transport the food:

4548 (i) a container; or

4549 (ii) packaging.

4550 (97) "Prescription" means an order, formula, or recipe that is issued:

4551 (a) (i) orally;

4552 (ii) in writing;
4553 (iii) electronically; or
4554 (iv) by any other manner of transmission; and
4555 (b) by a licensed practitioner authorized by the laws of a state.

4556 (98) (a) Except as provided in Subsection (98)(b)(ii) or (iii), "prewritten computer
4557 software" means computer software that is not designed and developed:
4558 (i) by the author or other creator of the computer software; and
4559 (ii) to the specifications of a specific purchaser.

4560 (b) "Prewritten computer software" includes:
4561 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
4562 software is not designed and developed:
4563 (A) by the author or other creator of the computer software; and
4564 (B) to the specifications of a specific purchaser;
4565 (ii) computer software designed and developed by the author or other creator of the
4566 computer software to the specifications of a specific purchaser if the computer software is sold
4567 to a person other than the purchaser; or
4568 (iii) except as provided in Subsection (98)(c), prewritten computer software or a
4569 prewritten portion of prewritten computer software:
4570 (A) that is modified or enhanced to any degree; and
4571 (B) if the modification or enhancement described in Subsection (98)(b)(iii)(A) is
4572 designed and developed to the specifications of a specific purchaser.

4573 (c) "Prewritten computer software" does not include a modification or enhancement
4574 described in Subsection (98)(b)(iii) if the charges for the modification or enhancement are:
4575 (i) reasonable; and
4576 (ii) subject to Subsections 59-12-103(2)(f)(ii) and (2)(g)(i), separately stated on the
4577 invoice or other statement of price provided to the purchaser at the time of sale or later, as
4578 demonstrated by:
4579 (A) the books and records the seller keeps at the time of the transaction in the regular
4580 course of business, including books and records the seller keeps at the time of the transaction in
4581 the regular course of business for nontax purposes;
4582 (B) a preponderance of the facts and circumstances at the time of the transaction; and

- 4583 (C) the understanding of all of the parties to the transaction.
- 4584 (99) (a) "Private communications service" means a telecommunications service:
- 4585 (i) that entitles a customer to exclusive or priority use of one or more communications
- 4586 channels between or among termination points; and
- 4587 (ii) regardless of the manner in which the one or more communications channels are
- 4588 connected.
- 4589 (b) "Private communications service" includes the following provided in connection
- 4590 with the use of one or more communications channels:
- 4591 (i) an extension line;
- 4592 (ii) a station;
- 4593 (iii) switching capacity; or
- 4594 (iv) another associated service that is provided in connection with the use of one or
- 4595 more communications channels as defined in Section [59-12-215](#).
- 4596 (100) (a) Except as provided in Subsection (100)(b), "product transferred
- 4597 electronically" means a product transferred electronically that would be subject to a tax under
- 4598 this chapter if that product was transferred in a manner other than electronically.
- 4599 (b) "Product transferred electronically" does not include:
- 4600 (i) an ancillary service;
- 4601 (ii) computer software; or
- 4602 (iii) a telecommunications service.
- 4603 (101) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 4604 (i) artificially replace a missing portion of the body;
- 4605 (ii) prevent or correct a physical deformity or physical malfunction; or
- 4606 (iii) support a weak or deformed portion of the body.
- 4607 (b) "Prosthetic device" includes:
- 4608 (i) parts used in the repairs or renovation of a prosthetic device;
- 4609 (ii) replacement parts for a prosthetic device;
- 4610 (iii) a dental prosthesis; or
- 4611 (iv) a hearing aid.
- 4612 (c) "Prosthetic device" does not include:
- 4613 (i) corrective eyeglasses; or

4614 (ii) contact lenses.

4615 (102) (a) "Protective equipment" means an item:

4616 (i) for human wear; and

4617 (ii) that is:

4618 (A) designed as protection:

4619 (I) to the wearer against injury or disease; or

4620 (II) against damage or injury of other persons or property; and

4621 (B) not suitable for general use.

4622 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

4623 commission shall make rules:

4624 (i) listing the items that constitute "protective equipment"; and

4625 (ii) that are consistent with the list of items that constitute "protective equipment"

4626 under the agreement.

4627 (103) (a) For purposes of Subsection 59-12-104(41), "publication" means any written

4628 or printed matter, other than a photocopy:

4629 (i) regardless of:

4630 (A) characteristics;

4631 (B) copyright;

4632 (C) form;

4633 (D) format;

4634 (E) method of reproduction; or

4635 (F) source; and

4636 (ii) made available in printed or electronic format.

4637 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

4638 commission may by rule define the term "photocopy."

4639 (104) (a) "Purchase price" and "sales price" mean the total amount of consideration:

4640 (i) valued in money; and

4641 (ii) for which tangible personal property, a product transferred electronically, or

4642 services are:

4643 (A) sold;

4644 (B) leased; or

4645 (C) rented.

4646 (b) "Purchase price" and "sales price" include:

4647 (i) the seller's cost of the tangible personal property, a product transferred

4648 electronically, or services sold;

4649 (ii) expenses of the seller, including:

4650 (A) the cost of materials used;

4651 (B) a labor cost;

4652 (C) a service cost;

4653 (D) interest;

4654 (E) a loss;

4655 (F) the cost of transportation to the seller; or

4656 (G) a tax imposed on the seller;

4657 (iii) a charge by the seller for any service necessary to complete the sale; or

4658 (iv) consideration a seller receives from a person other than the purchaser if:

4659 (A) (I) the seller actually receives consideration from a person other than the purchaser;

4660 and

4661 (II) the consideration described in Subsection (104)(b)(iv)(A)(I) is directly related to a

4662 price reduction or discount on the sale;

4663 (B) the seller has an obligation to pass the price reduction or discount through to the

4664 purchaser;

4665 (C) the amount of the consideration attributable to the sale is fixed and determinable by

4666 the seller at the time of the sale to the purchaser; and

4667 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the

4668 seller to claim a price reduction or discount; and

4669 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,

4670 coupon, or other documentation with the understanding that the person other than the seller

4671 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

4672 (II) the purchaser identifies that purchaser to the seller as a member of a group or

4673 organization allowed a price reduction or discount, except that a preferred customer card that is

4674 available to any patron of a seller does not constitute membership in a group or organization

4675 allowed a price reduction or discount; or

4676 (III) the price reduction or discount is identified as a third party price reduction or
4677 discount on the:

4678 (Aa) invoice the purchaser receives; or
4679 (Bb) certificate, coupon, or other documentation the purchaser presents.
4680 (c) "Purchase price" and "sales price" do not include:
4681 (i) a discount:
4682 (A) in a form including:
4683 (I) cash;
4684 (II) term; or
4685 (III) coupon;
4686 (B) that is allowed by a seller;
4687 (C) taken by a purchaser on a sale; and
4688 (D) that is not reimbursed by a third party; or
4689 (ii) subject to Subsections 59-12-103(2)(f)(ii) and (2)(g)(i), the following if separately
4690 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
4691 sale or later, as demonstrated by the books and records the seller keeps at the time of the
4692 transaction in the regular course of business, including books and records the seller keeps at the
4693 time of the transaction in the regular course of business for nontax purposes, by a
4694 preponderance of the facts and circumstances at the time of the transaction, and by the
4695 understanding of all of the parties to the transaction:
4696 (A) the following from credit extended on the sale of tangible personal property or
4697 services:
4698 (I) a carrying charge;
4699 (II) a financing charge; or
4700 (III) an interest charge;
4701 (B) a delivery charge;
4702 (C) an installation charge;
4703 (D) a manufacturer rebate on a motor vehicle; or
4704 (E) a tax or fee legally imposed directly on the consumer.
4705 (105) "Purchaser" means a person to whom:
4706 (a) a sale of tangible personal property is made;

- 4707 (b) a product is transferred electronically; or
4708 (c) a service is furnished.
- 4709 (106) "Qualifying data center" means a data center facility that:
4710 (a) houses a group of networked server computers in one physical location in order to
4711 disseminate, manage, and store data and information;
4712 (b) is located in the state;
4713 (c) is a new operation constructed on or after July 1, 2016;
4714 (d) consists of one or more buildings that total 150,000 or more square feet;
4715 (e) is owned or leased by:
4716 (i) the operator of the data center facility; or
4717 (ii) a person under common ownership, as defined in Section 59-7-101, of the operator
4718 of the data center facility; and
4719 (f) is located on one or more parcels of land that are owned or leased by:
4720 (i) the operator of the data center facility; or
4721 (ii) a person under common ownership, as defined in Section 59-7-101, of the operator
4722 of the data center facility.
- 4723 (107) "Regularly rented" means:
4724 (a) rented to a guest for value three or more times during a calendar year; or
4725 (b) advertised or held out to the public as a place that is regularly rented to guests for
4726 value.
- 4727 (108) "Rental" means the same as that term is defined in Subsection (60).
- 4728 (109) (a) Except as provided in Subsection (109)(b), "repairs or renovations of tangible
4729 personal property" means:
4730 (i) a repair or renovation of tangible personal property that is not permanently attached
4731 to real property; or
4732 (ii) attaching tangible personal property or a product transferred electronically to other
4733 tangible personal property or detaching tangible personal property or a product transferred
4734 electronically from other tangible personal property if:
4735 (A) the other tangible personal property to which the tangible personal property or
4736 product transferred electronically is attached or from which the tangible personal property or
4737 product transferred electronically is detached is not permanently attached to real property; and

4738 (B) the attachment of tangible personal property or a product transferred electronically
4739 to other tangible personal property or detachment of tangible personal property or a product
4740 transferred electronically from other tangible personal property is made in conjunction with a
4741 repair or replacement of tangible personal property or a product transferred electronically.

4742 (b) "Repairs or renovations of tangible personal property" does not include:

4743 (i) attaching prewritten computer software to other tangible personal property if the
4744 other tangible personal property to which the prewritten computer software is attached is not
4745 permanently attached to real property; or

4746 (ii) detaching prewritten computer software from other tangible personal property if the
4747 other tangible personal property from which the prewritten computer software is detached is
4748 not permanently attached to real property.

4749 (110) "Research and development" means the process of inquiry or experimentation
4750 aimed at the discovery of facts, devices, technologies, or applications and the process of
4751 preparing those devices, technologies, or applications for marketing.

4752 (111) (a) "Residential telecommunications services" means a telecommunications
4753 service or an ancillary service that is provided to an individual for personal use:

4754 (i) at a residential address; or

4755 (ii) at an institution, including a nursing home or a school, if the telecommunications
4756 service or ancillary service is provided to and paid for by the individual residing at the
4757 institution rather than the institution.

4758 (b) For purposes of Subsection (111)(a)(i), a residential address includes an:

4759 (i) apartment; or

4760 (ii) other individual dwelling unit.

4761 (112) "Residential use" means the use in or around a home, apartment building,
4762 sleeping quarters, and similar facilities or accommodations.

4763 (113) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
4764 than:

4765 (a) resale;

4766 (b) sublease; or

4767 (c) subrent.

4768 (114) (a) "Retailer" means any person, unless prohibited by the Constitution of the

4769 United States or federal law, that is engaged in a regularly organized business in tangible
4770 personal property or any other taxable transaction under Subsection 59-12-103(1), and who is
4771 selling to the user or consumer and not for resale.

4772 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
4773 engaged in the business of selling to users or consumers within the state.

4774 (115) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
4775 otherwise, in any manner, of tangible personal property or any other taxable transaction under
4776 Subsection 59-12-103(1), for consideration.

4777 (b) "Sale" includes:

4778 (i) installment and credit sales;

4779 (ii) any closed transaction constituting a sale;

4780 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
4781 chapter;

4782 (iv) any transaction if the possession of property is transferred but the seller retains the
4783 title as security for the payment of the price; and

4784 (v) any transaction under which right to possession, operation, or use of any article of
4785 tangible personal property is granted under a lease or contract and the transfer of possession
4786 would be taxable if an outright sale were made.

4787 (116) "Sale at retail" means the same as that term is defined in Subsection (113).

4788 (117) "Sale-leaseback transaction" means a transaction by which title to tangible
4789 personal property or a product transferred electronically that is subject to a tax under this
4790 chapter is transferred:

4791 (a) by a purchaser-lessee;

4792 (b) to a lessor;

4793 (c) for consideration; and

4794 (d) if:

4795 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
4796 of the tangible personal property or product transferred electronically;

4797 (ii) the sale of the tangible personal property or product transferred electronically to the
4798 lessor is intended as a form of financing:

4799 (A) for the tangible personal property or product transferred electronically; and

4800 (B) to the purchaser-lessee; and
4801 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
4802 is required to:
4803 (A) capitalize the tangible personal property or product transferred electronically for
4804 financial reporting purposes; and
4805 (B) account for the lease payments as payments made under a financing arrangement.
4806 (118) "Sales price" means the same as that term is defined in Subsection (104).
4807 (119) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
4808 amounts charged by a school:
4809 (i) sales that are directly related to the school's educational functions or activities
4810 including:
4811 (A) the sale of:
4812 (I) textbooks;
4813 (II) textbook fees;
4814 (III) laboratory fees;
4815 (IV) laboratory supplies; or
4816 (V) safety equipment;
4817 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
4818 that:
4819 (I) a student is specifically required to wear as a condition of participation in a
4820 school-related event or school-related activity; and
4821 (II) is not readily adaptable to general or continued usage to the extent that it takes the
4822 place of ordinary clothing;
4823 (C) sales of the following if the net or gross revenues generated by the sales are
4824 deposited into a school district fund or school fund dedicated to school meals:
4825 (I) food and food ingredients; or
4826 (II) prepared food; or
4827 (D) transportation charges for official school activities; or
4828 (ii) amounts paid to or amounts charged by a school for admission to a school-related
4829 event or school-related activity.
4830 (b) "Sales relating to schools" does not include:

4831 (i) bookstore sales of items that are not educational materials or supplies;
4832 (ii) except as provided in Subsection (119)(a)(i)(B):
4833 (A) clothing;
4834 (B) clothing accessories or equipment;
4835 (C) protective equipment; or
4836 (D) sports or recreational equipment; or
4837 (iii) amounts paid to or amounts charged by a school for admission to a school-related
4838 event or school-related activity if the amounts paid or charged are passed through to a person:
4839 (A) other than a:
4840 (I) school;
4841 (II) nonprofit organization authorized by a school board or a governing body of a
4842 private school to organize and direct a competitive secondary school activity; or
4843 (III) nonprofit association authorized by a school board or a governing body of a
4844 private school to organize and direct a competitive secondary school activity; and
4845 (B) that is required to collect sales and use taxes under this chapter.
4846 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
4847 commission may make rules defining the term "passed through."
4848 (120) For purposes of this section and Section 59-12-104, "school" means:
4849 (a) an elementary school or a secondary school that:
4850 (i) is a:
4851 (A) public school; or
4852 (B) private school; and
4853 (ii) provides instruction for one or more grades kindergarten through 12; or
4854 (b) a public school district.
4855 (121) (a) "Seller" means a person that makes a sale, lease, or rental of:
4856 (i) tangible personal property;
4857 (ii) a product transferred electronically; or
4858 (iii) a service.
4859 (b) "Seller" includes a marketplace facilitator.
4860 (122) (a) "Semiconductor fabricating, processing, research, or development materials"
4861 means tangible personal property or a product transferred electronically if the tangible personal

4862 property or product transferred electronically is:

4863 (i) used primarily in the process of:

4864 (A) (I) manufacturing a semiconductor;

4865 (II) fabricating a semiconductor; or

4866 (III) research or development of a:

4867 (Aa) semiconductor; or

4868 (Bb) semiconductor manufacturing process; or

4869 (B) maintaining an environment suitable for a semiconductor; or

4870 (ii) consumed primarily in the process of:

4871 (A) (I) manufacturing a semiconductor;

4872 (II) fabricating a semiconductor; or

4873 (III) research or development of a:

4874 (Aa) semiconductor; or

4875 (Bb) semiconductor manufacturing process; or

4876 (B) maintaining an environment suitable for a semiconductor.

4877 (b) "Semiconductor fabricating, processing, research, or development materials"

4878 includes:

4879 (i) parts used in the repairs or renovations of tangible personal property or a product

4880 transferred electronically described in Subsection (122)(a); or

4881 (ii) a chemical, catalyst, or other material used to:

4882 (A) produce or induce in a semiconductor a:

4883 (I) chemical change; or

4884 (II) physical change;

4885 (B) remove impurities from a semiconductor; or

4886 (C) improve the marketable condition of a semiconductor.

4887 (123) "Senior citizen center" means a facility having the primary purpose of providing

4888 services to the aged as defined in Section ~~[62A-3-101]~~ 26B-6-101.

4889 (124) (a) Subject to Subsections (124)(b) and (c), "short-term lodging consumable"

4890 means tangible personal property that:

4891 (i) a business that provides accommodations and services described in Subsection

4892 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services

4893 to a purchaser;
4894 (ii) is intended to be consumed by the purchaser; and
4895 (iii) is:
4896 (A) included in the purchase price of the accommodations and services; and
4897 (B) not separately stated on an invoice, bill of sale, or other similar document provided
4898 to the purchaser.
4899 (b) "Short-term lodging consumable" includes:
4900 (i) a beverage;
4901 (ii) a brush or comb;
4902 (iii) a cosmetic;
4903 (iv) a hair care product;
4904 (v) lotion;
4905 (vi) a magazine;
4906 (vii) makeup;
4907 (viii) a meal;
4908 (ix) mouthwash;
4909 (x) nail polish remover;
4910 (xi) a newspaper;
4911 (xii) a notepad;
4912 (xiii) a pen;
4913 (xiv) a pencil;
4914 (xv) a razor;
4915 (xvi) saline solution;
4916 (xvii) a sewing kit;
4917 (xviii) shaving cream;
4918 (xix) a shoe shine kit;
4919 (xx) a shower cap;
4920 (xxi) a snack item;
4921 (xxii) soap;
4922 (xxiii) toilet paper;
4923 (xxiv) a toothbrush;

4924 (xxv) toothpaste; or
 4925 (xxvi) an item similar to Subsections (124)(b)(i) through (xxv) as the commission may
 4926 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
 4927 Rulemaking Act.
 4928 (c) "Short-term lodging consumable" does not include:
 4929 (i) tangible personal property that is cleaned or washed to allow the tangible personal
 4930 property to be reused; or
 4931 (ii) a product transferred electronically.
 4932 (125) "Simplified electronic return" means the electronic return:
 4933 (a) described in Section 318(C) of the agreement; and
 4934 (b) approved by the governing board of the agreement.
 4935 (126) "Solar energy" means the sun used as the sole source of energy for producing
 4936 electricity.
 4937 (127) (a) "Sports or recreational equipment" means an item:
 4938 (i) designed for human use; and
 4939 (ii) that is:
 4940 (A) worn in conjunction with:
 4941 (I) an athletic activity; or
 4942 (II) a recreational activity; and
 4943 (B) not suitable for general use.
 4944 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 4945 commission shall make rules:
 4946 (i) listing the items that constitute "sports or recreational equipment"; and
 4947 (ii) that are consistent with the list of items that constitute "sports or recreational
 4948 equipment" under the agreement.
 4949 (128) "State" means the state of Utah, its departments, and agencies.
 4950 (129) "Storage" means any keeping or retention of tangible personal property or any
 4951 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
 4952 sale in the regular course of business.
 4953 (130) (a) Except as provided in Subsection (130)(d) or (e), "tangible personal property"
 4954 means personal property that:

- 4955 (i) may be:
4956 (A) seen;
4957 (B) weighed;
4958 (C) measured;
4959 (D) felt; or
4960 (E) touched; or
4961 (ii) is in any manner perceptible to the senses.
- 4962 (b) "Tangible personal property" includes:
4963 (i) electricity;
4964 (ii) water;
4965 (iii) gas;
4966 (iv) steam; or
4967 (v) prewritten computer software, regardless of the manner in which the prewritten
4968 computer software is transferred.
- 4969 (c) "Tangible personal property" includes the following regardless of whether the item
4970 is attached to real property:
4971 (i) a dishwasher;
4972 (ii) a dryer;
4973 (iii) a freezer;
4974 (iv) a microwave;
4975 (v) a refrigerator;
4976 (vi) a stove;
4977 (vii) a washer; or
4978 (viii) an item similar to Subsections (130)(c)(i) through (vii) as determined by the
4979 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
4980 Rulemaking Act.
- 4981 (d) "Tangible personal property" does not include a product that is transferred
4982 electronically.
- 4983 (e) "Tangible personal property" does not include the following if attached to real
4984 property, regardless of whether the attachment to real property is only through a line that
4985 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the

4986 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
4987 Rulemaking Act:

- 4988 (i) a hot water heater;
- 4989 (ii) a water filtration system; or
- 4990 (iii) a water softener system.

4991 (131) (a) "Telecommunications enabling or facilitating equipment, machinery, or
4992 software" means an item listed in Subsection (131)(b) if that item is purchased or leased
4993 primarily to enable or facilitate one or more of the following to function:

- 4994 (i) telecommunications switching or routing equipment, machinery, or software; or
- 4995 (ii) telecommunications transmission equipment, machinery, or software.

4996 (b) The following apply to Subsection (131)(a):

- 4997 (i) a pole;
- 4998 (ii) software;
- 4999 (iii) a supplementary power supply;
- 5000 (iv) temperature or environmental equipment or machinery;
- 5001 (v) test equipment;
- 5002 (vi) a tower; or
- 5003 (vii) equipment, machinery, or software that functions similarly to an item listed in
5004 Subsections (131)(b)(i) through (vi) as determined by the commission by rule made in
5005 accordance with Subsection (131)(c).

5006 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5007 commission may by rule define what constitutes equipment, machinery, or software that
5008 functions similarly to an item listed in Subsections (131)(b)(i) through (vi).

5009 (132) "Telecommunications equipment, machinery, or software required for 911
5010 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
5011 Sec. 20.18.

5012 (133) "Telecommunications maintenance or repair equipment, machinery, or software"
5013 means equipment, machinery, or software purchased or leased primarily to maintain or repair
5014 one or more of the following, regardless of whether the equipment, machinery, or software is
5015 purchased or leased as a spare part or as an upgrade or modification to one or more of the
5016 following:

- 5017 (a) telecommunications enabling or facilitating equipment, machinery, or software;
5018 (b) telecommunications switching or routing equipment, machinery, or software; or
5019 (c) telecommunications transmission equipment, machinery, or software.
- 5020 (134) (a) "Telecommunications service" means the electronic conveyance, routing, or
5021 transmission of audio, data, video, voice, or any other information or signal to a point, or
5022 among or between points.
- 5023 (b) "Telecommunications service" includes:
- 5024 (i) an electronic conveyance, routing, or transmission with respect to which a computer
5025 processing application is used to act:
- 5026 (A) on the code, form, or protocol of the content;
5027 (B) for the purpose of electronic conveyance, routing, or transmission; and
5028 (C) regardless of whether the service:
- 5029 (I) is referred to as voice over Internet protocol service; or
5030 (II) is classified by the Federal Communications Commission as enhanced or value
5031 added;
- 5032 (ii) an 800 service;
5033 (iii) a 900 service;
5034 (iv) a fixed wireless service;
5035 (v) a mobile wireless service;
5036 (vi) a postpaid calling service;
5037 (vii) a prepaid calling service;
5038 (viii) a prepaid wireless calling service; or
5039 (ix) a private communications service.
- 5040 (c) "Telecommunications service" does not include:
- 5041 (i) advertising, including directory advertising;
5042 (ii) an ancillary service;
5043 (iii) a billing and collection service provided to a third party;
5044 (iv) a data processing and information service if:
5045 (A) the data processing and information service allows data to be:
5046 (I) (Aa) acquired;
5047 (Bb) generated;

5048 (Cc) processed;
 5049 (Dd) retrieved; or
 5050 (Ee) stored; and
 5051 (II) delivered by an electronic transmission to a purchaser; and
 5052 (B) the purchaser's primary purpose for the underlying transaction is the processed data
 5053 or information;
 5054 (v) installation or maintenance of the following on a customer's premises:
 5055 (A) equipment; or
 5056 (B) wiring;
 5057 (vi) Internet access service;
 5058 (vii) a paging service;
 5059 (viii) a product transferred electronically, including:
 5060 (A) music;
 5061 (B) reading material;
 5062 (C) a ring tone;
 5063 (D) software; or
 5064 (E) video;
 5065 (ix) a radio and television audio and video programming service:
 5066 (A) regardless of the medium; and
 5067 (B) including:
 5068 (I) furnishing conveyance, routing, or transmission of a television audio and video
 5069 programming service by a programming service provider;
 5070 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 5071 (III) audio and video programming services delivered by a commercial mobile radio
 5072 service provider as defined in 47 C.F.R. Sec. 20.3;
 5073 (x) a value-added nonvoice data service; or
 5074 (xi) tangible personal property.
 5075 (135) (a) "Telecommunications service provider" means a person that:
 5076 (i) owns, controls, operates, or manages a telecommunications service; and
 5077 (ii) engages in an activity described in Subsection (135)(a)(i) for the shared use with or
 5078 resale to any person of the telecommunications service.

5079 (b) A person described in Subsection (135)(a) is a telecommunications service provider
5080 whether or not the Public Service Commission of Utah regulates:

5081 (i) that person; or

5082 (ii) the telecommunications service that the person owns, controls, operates, or
5083 manages.

5084 (136) (a) "Telecommunications switching or routing equipment, machinery, or
5085 software" means an item listed in Subsection (136)(b) if that item is purchased or leased
5086 primarily for switching or routing:

5087 (i) an ancillary service;

5088 (ii) data communications;

5089 (iii) voice communications; or

5090 (iv) telecommunications service.

5091 (b) The following apply to Subsection (136)(a):

5092 (i) a bridge;

5093 (ii) a computer;

5094 (iii) a cross connect;

5095 (iv) a modem;

5096 (v) a multiplexer;

5097 (vi) plug in circuitry;

5098 (vii) a router;

5099 (viii) software;

5100 (ix) a switch; or

5101 (x) equipment, machinery, or software that functions similarly to an item listed in
5102 Subsections (136)(b)(i) through (ix) as determined by the commission by rule made in
5103 accordance with Subsection (136)(c).

5104 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5105 commission may by rule define what constitutes equipment, machinery, or software that
5106 functions similarly to an item listed in Subsections (136)(b)(i) through (ix).

5107 (137) (a) "Telecommunications transmission equipment, machinery, or software"
5108 means an item listed in Subsection (137)(b) if that item is purchased or leased primarily for
5109 sending, receiving, or transporting:

- 5110 (i) an ancillary service;
- 5111 (ii) data communications;
- 5112 (iii) voice communications; or
- 5113 (iv) telecommunications service.
- 5114 (b) The following apply to Subsection (137)(a):
- 5115 (i) an amplifier;
- 5116 (ii) a cable;
- 5117 (iii) a closure;
- 5118 (iv) a conduit;
- 5119 (v) a controller;
- 5120 (vi) a duplexer;
- 5121 (vii) a filter;
- 5122 (viii) an input device;
- 5123 (ix) an input/output device;
- 5124 (x) an insulator;
- 5125 (xi) microwave machinery or equipment;
- 5126 (xii) an oscillator;
- 5127 (xiii) an output device;
- 5128 (xiv) a pedestal;
- 5129 (xv) a power converter;
- 5130 (xvi) a power supply;
- 5131 (xvii) a radio channel;
- 5132 (xviii) a radio receiver;
- 5133 (xix) a radio transmitter;
- 5134 (xx) a repeater;
- 5135 (xxi) software;
- 5136 (xxii) a terminal;
- 5137 (xxiii) a timing unit;
- 5138 (xxiv) a transformer;
- 5139 (xxv) a wire; or
- 5140 (xxvi) equipment, machinery, or software that functions similarly to an item listed in

5141 Subsections (137)(b)(i) through (xxv) as determined by the commission by rule made in
5142 accordance with Subsection (137)(c).

5143 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5144 commission may by rule define what constitutes equipment, machinery, or software that
5145 functions similarly to an item listed in Subsections (137)(b)(i) through (xxv).

5146 (138) (a) "Textbook for a higher education course" means a textbook or other printed
5147 material that is required for a course:

5148 (i) offered by an institution of higher education; and

5149 (ii) that the purchaser of the textbook or other printed material attends or will attend.

5150 (b) "Textbook for a higher education course" includes a textbook in electronic format.

5151 (139) "Tobacco" means:

5152 (a) a cigarette;

5153 (b) a cigar;

5154 (c) chewing tobacco;

5155 (d) pipe tobacco; or

5156 (e) any other item that contains tobacco.

5157 (140) "Unassisted amusement device" means an amusement device, skill device, or
5158 ride device that is started and stopped by the purchaser or renter of the right to use or operate
5159 the amusement device, skill device, or ride device.

5160 (141) (a) "Use" means the exercise of any right or power over tangible personal
5161 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
5162 incident to the ownership or the leasing of that tangible personal property, product transferred
5163 electronically, or service.

5164 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
5165 property, a product transferred electronically, or a service in the regular course of business and
5166 held for resale.

5167 (142) "Value-added nonvoice data service" means a service:

5168 (a) that otherwise meets the definition of a telecommunications service except that a
5169 computer processing application is used to act primarily for a purpose other than conveyance,
5170 routing, or transmission; and

5171 (b) with respect to which a computer processing application is used to act on data or

5172 information:

- 5173 (i) code;
- 5174 (ii) content;
- 5175 (iii) form; or
- 5176 (iv) protocol.

5177 (143) (a) Subject to Subsection (143)(b), "vehicle" means the following that are
5178 required to be titled, registered, or titled and registered:

- 5179 (i) an aircraft as defined in Section 72-10-102;
- 5180 (ii) a vehicle as defined in Section 41-1a-102;
- 5181 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 5182 (iv) a vessel as defined in Section 41-1a-102.

5183 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 5184 (i) a vehicle described in Subsection (143)(a); or
- 5185 (ii) (A) a locomotive;
- 5186 (B) a freight car;
- 5187 (C) railroad work equipment; or
- 5188 (D) other railroad rolling stock.

5189 (144) "Vehicle dealer" means a person engaged in the business of buying, selling, or
5190 exchanging a vehicle as defined in Subsection (143).

5191 (145) (a) "Vertical service" means an ancillary service that:

- 5192 (i) is offered in connection with one or more telecommunications services; and
- 5193 (ii) offers an advanced calling feature that allows a customer to:
- 5194 (A) identify a caller; and
- 5195 (B) manage multiple calls and call connections.

5196 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
5197 conference bridging service.

5198 (146) (a) "Voice mail service" means an ancillary service that enables a customer to
5199 receive, send, or store a recorded message.

5200 (b) "Voice mail service" does not include a vertical service that a customer is required
5201 to have in order to utilize a voice mail service.

5202 (147) (a) Except as provided in Subsection (147)(b), "waste energy facility" means a

5203 facility that generates electricity:

5204 (i) using as the primary source of energy waste materials that would be placed in a
5205 landfill or refuse pit if it were not used to generate electricity, including:

5206 (A) tires;

5207 (B) waste coal;

5208 (C) oil shale; or

5209 (D) municipal solid waste; and

5210 (ii) in amounts greater than actually required for the operation of the facility.

5211 (b) "Waste energy facility" does not include a facility that incinerates:

5212 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

5213 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

5214 (148) "Watercraft" means a vessel as defined in Section [73-18-2](#).

5215 (149) "Wind energy" means wind used as the sole source of energy to produce
5216 electricity.

5217 (150) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
5218 location by the United States Postal Service.

5219 Section 60. Section **59-12-103** is amended to read:

5220 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
5221 **tax revenues.**

5222 (1) A tax is imposed on the purchaser as provided in this part on the purchase price or
5223 sales price for amounts paid or charged for the following transactions:

5224 (a) retail sales of tangible personal property made within the state;

5225 (b) amounts paid for:

5226 (i) telecommunications service, other than mobile telecommunications service, that
5227 originates and terminates within the boundaries of this state;

5228 (ii) mobile telecommunications service that originates and terminates within the
5229 boundaries of one state only to the extent permitted by the Mobile Telecommunications
5230 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

5231 (iii) an ancillary service associated with a:

5232 (A) telecommunications service described in Subsection (1)(b)(i); or

5233 (B) mobile telecommunications service described in Subsection (1)(b)(ii);

- 5234 (c) sales of the following for commercial use:
- 5235 (i) gas;
- 5236 (ii) electricity;
- 5237 (iii) heat;
- 5238 (iv) coal;
- 5239 (v) fuel oil; or
- 5240 (vi) other fuels;
- 5241 (d) sales of the following for residential use:
- 5242 (i) gas;
- 5243 (ii) electricity;
- 5244 (iii) heat;
- 5245 (iv) coal;
- 5246 (v) fuel oil; or
- 5247 (vi) other fuels;
- 5248 (e) sales of prepared food;
- 5249 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 5250 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 5251 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 5252 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 5253 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 5254 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 5255 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 5256 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 5257 exhibition, cultural, or athletic activity;
- 5258 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 5259 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 5260 (i) the tangible personal property; and
- 5261 (ii) parts used in the repairs or renovations of the tangible personal property described
- 5262 in Subsection (1)(g)(i), regardless of whether:
- 5263 (A) any parts are actually used in the repairs or renovations of that tangible personal
- 5264 property; or

5265 (B) the particular parts used in the repairs or renovations of that tangible personal
5266 property are exempt from a tax under this chapter;

5267 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
5268 assisted cleaning or washing of tangible personal property;

5269 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
5270 accommodations and services that are regularly rented for less than 30 consecutive days;

5271 (j) amounts paid or charged for laundry or dry cleaning services;

5272 (k) amounts paid or charged for leases or rentals of tangible personal property if within
5273 this state the tangible personal property is:

5274 (i) stored;

5275 (ii) used; or

5276 (iii) otherwise consumed;

5277 (l) amounts paid or charged for tangible personal property if within this state the
5278 tangible personal property is:

5279 (i) stored;

5280 (ii) used; or

5281 (iii) consumed; and

5282 (m) amounts paid or charged for a sale:

5283 (i) (A) of a product transferred electronically; or

5284 (B) of a repair or renovation of a product transferred electronically; and

5285 (ii) regardless of whether the sale provides:

5286 (A) a right of permanent use of the product; or

5287 (B) a right to use the product that is less than a permanent use, including a right:

5288 (I) for a definite or specified length of time; and

5289 (II) that terminates upon the occurrence of a condition.

5290 (2) (a) Except as provided in Subsections (2)(b) through (f), a state tax and a local tax
5291 are imposed on a transaction described in Subsection (1) equal to the sum of:

5292 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:

5293 (A) 4.70% plus the rate specified in Subsection (12)(a); and

5294 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
5295 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211

5296 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
5297 State Sales and Use Tax Act; and

5298 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
5299 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
5300 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
5301 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

5302 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
5303 transaction under this chapter other than this part.

5304 (b) Except as provided in Subsection (2)(e) or (f) and subject to Subsection (2)(k), a
5305 state tax and a local tax are imposed on a transaction described in Subsection (1)(d) equal to
5306 the sum of:

5307 (i) a state tax imposed on the transaction at a tax rate of 2%; and

5308 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
5309 transaction under this chapter other than this part.

5310 (c) Except as provided in Subsection (2)(e) or (f), a state tax and a local tax are
5311 imposed on amounts paid or charged for food and food ingredients equal to the sum of:

5312 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
5313 a tax rate of 1.75%; and

5314 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
5315 amounts paid or charged for food and food ingredients under this chapter other than this part.

5316 (d) Except as provided in Subsection (2)(e) or (f), a state tax is imposed on amounts
5317 paid or charged for fuel to a common carrier that is a railroad for use in a locomotive engine at
5318 a rate of 4.85%.

5319 (e) (i) For a bundled transaction that is attributable to food and food ingredients and
5320 tangible personal property other than food and food ingredients, a state tax and a local tax is
5321 imposed on the entire bundled transaction equal to the sum of:

5322 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

5323 (I) the tax rate described in Subsection (2)(a)(i)(A); and

5324 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
5325 Sales and Use Tax Act, if the location of the transaction as determined under Sections

5326 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,

5327 Additional State Sales and Use Tax Act; and

5328 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
5329 Sales and Use Tax Act, if the location of the transaction as determined under Sections
5330 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
5331 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

5332 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
5333 described in Subsection (2)(a)(ii).

5334 (ii) If an optional computer software maintenance contract is a bundled transaction that
5335 consists of taxable and nontaxable products that are not separately itemized on an invoice or
5336 similar billing document, the purchase of the optional computer software maintenance contract
5337 is 40% taxable under this chapter and 60% nontaxable under this chapter.

5338 (iii) Subject to Subsection (2)(e)(iv), for a bundled transaction other than a bundled
5339 transaction described in Subsection (2)(e)(i) or (ii):

5340 (A) if the sales price of the bundled transaction is attributable to tangible personal
5341 property, a product, or a service that is subject to taxation under this chapter and tangible
5342 personal property, a product, or service that is not subject to taxation under this chapter, the
5343 entire bundled transaction is subject to taxation under this chapter unless:

5344 (I) the seller is able to identify by reasonable and verifiable standards the tangible
5345 personal property, product, or service that is not subject to taxation under this chapter from the
5346 books and records the seller keeps in the seller's regular course of business; or

5347 (II) state or federal law provides otherwise; or

5348 (B) if the sales price of a bundled transaction is attributable to two or more items of
5349 tangible personal property, products, or services that are subject to taxation under this chapter
5350 at different rates, the entire bundled transaction is subject to taxation under this chapter at the
5351 higher tax rate unless:

5352 (I) the seller is able to identify by reasonable and verifiable standards the tangible
5353 personal property, product, or service that is subject to taxation under this chapter at the lower
5354 tax rate from the books and records the seller keeps in the seller's regular course of business; or

5355 (II) state or federal law provides otherwise.

5356 (iv) For purposes of Subsection (2)(e)(iii), books and records that a seller keeps in the
5357 seller's regular course of business includes books and records the seller keeps in the regular

5358 course of business for nontax purposes.

5359 (f) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(f)(ii)
5360 and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a
5361 product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental
5362 of tangible personal property, other property, a product, or a service that is not subject to
5363 taxation under this chapter, the entire transaction is subject to taxation under this chapter unless
5364 the seller, at the time of the transaction:

5365 (A) separately states the portion of the transaction that is not subject to taxation under
5366 this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

5367 (B) is able to identify by reasonable and verifiable standards, from the books and
5368 records the seller keeps in the seller's regular course of business, the portion of the transaction
5369 that is not subject to taxation under this chapter.

5370 (ii) A purchaser and a seller may correct the taxability of a transaction if:

5371 (A) after the transaction occurs, the purchaser and the seller discover that the portion of
5372 the transaction that is not subject to taxation under this chapter was not separately stated on an
5373 invoice, bill of sale, or similar document provided to the purchaser because of an error or
5374 ignorance of the law; and

5375 (B) the seller is able to identify by reasonable and verifiable standards, from the books
5376 and records the seller keeps in the seller's regular course of business, the portion of the
5377 transaction that is not subject to taxation under this chapter.

5378 (iii) For purposes of Subsections (2)(f)(i) and (ii), books and records that a seller keeps
5379 in the seller's regular course of business includes books and records the seller keeps in the
5380 regular course of business for nontax purposes.

5381 (g) (i) If the sales price of a transaction is attributable to two or more items of tangible
5382 personal property, products, or services that are subject to taxation under this chapter at
5383 different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate
5384 unless the seller, at the time of the transaction:

5385 (A) separately states the items subject to taxation under this chapter at each of the
5386 different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

5387 (B) is able to identify by reasonable and verifiable standards the tangible personal
5388 property, product, or service that is subject to taxation under this chapter at the lower tax rate

5389 from the books and records the seller keeps in the seller's regular course of business.

5390 (ii) For purposes of Subsection (2)(g)(i), books and records that a seller keeps in the
5391 seller's regular course of business includes books and records the seller keeps in the regular
5392 course of business for nontax purposes.

5393 (h) Subject to Subsections (2)(i) and (j), a tax rate repeal or tax rate change for a tax
5394 rate imposed under the following shall take effect on the first day of a calendar quarter:

5395 (i) Subsection (2)(a)(i)(A);

5396 (ii) Subsection (2)(b)(i);

5397 (iii) Subsection (2)(c)(i); or

5398 (iv) Subsection (2)(e)(i)(A)(I).

5399 (i) (i) A tax rate increase takes effect on the first day of the first billing period that
5400 begins on or after the effective date of the tax rate increase if the billing period for the
5401 transaction begins before the effective date of a tax rate increase imposed under:

5402 (A) Subsection (2)(a)(i)(A);

5403 (B) Subsection (2)(b)(i);

5404 (C) Subsection (2)(c)(i); or

5405 (D) Subsection (2)(e)(i)(A)(I).

5406 (ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing
5407 statement for the billing period is rendered on or after the effective date of the repeal of the tax
5408 or the tax rate decrease imposed under:

5409 (A) Subsection (2)(a)(i)(A);

5410 (B) Subsection (2)(b)(i);

5411 (C) Subsection (2)(c)(i); or

5412 (D) Subsection (2)(e)(i)(A)(I).

5413 (j) (i) For a tax rate described in Subsection (2)(j)(ii), if a tax due on a catalogue sale is
5414 computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or
5415 change in a tax rate takes effect:

5416 (A) on the first day of a calendar quarter; and

5417 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

5418 (ii) Subsection (2)(j)(i) applies to the tax rates described in the following:

5419 (A) Subsection (2)(a)(i)(A);

5420 (B) Subsection (2)(b)(i);

5421 (C) Subsection (2)(c)(i); or

5422 (D) Subsection (2)(e)(i)(A)(I).

5423 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

5424 the commission may by rule define the term "catalogue sale."

5425 (k) (i) For a location described in Subsection (2)(k)(ii), the commission shall determine

5426 the taxable status of a sale of gas, electricity, heat, coal, fuel oil, or other fuel based on the

5427 predominant use of the gas, electricity, heat, coal, fuel oil, or other fuel at the location.

5428 (ii) Subsection (2)(k)(i) applies to a location where gas, electricity, heat, coal, fuel oil,

5429 or other fuel is furnished through a single meter for two or more of the following uses:

5430 (A) a commercial use;

5431 (B) an industrial use; or

5432 (C) a residential use.

5433 (3) (a) The following state taxes shall be deposited into the General Fund:

5434 (i) the tax imposed by Subsection (2)(a)(i)(A);

5435 (ii) the tax imposed by Subsection (2)(b)(i);

5436 (iii) the tax imposed by Subsection (2)(c)(i); and

5437 (iv) the tax imposed by Subsection (2)(e)(i)(A)(I).

5438 (b) The following local taxes shall be distributed to a county, city, or town as provided

5439 in this chapter:

5440 (i) the tax imposed by Subsection (2)(a)(ii);

5441 (ii) the tax imposed by Subsection (2)(b)(ii);

5442 (iii) the tax imposed by Subsection (2)(c)(ii); and

5443 (iv) the tax imposed by Subsection (2)(e)(i)(B).

5444 (c) The state tax imposed by Subsection (2)(d) shall be deposited into the General

5445 Fund.

5446 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,

5447 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b)

5448 through (g):

5449 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

5450 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

5451 (B) for the fiscal year; or
5452 (ii) \$17,500,000.

5453 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount
5454 described in Subsection (4)(a) shall be transferred each year as designated sales and use tax
5455 revenue to the Department of Natural Resources to:

5456 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to
5457 protect sensitive plant and animal species; or

5458 (B) award grants, up to the amount authorized by the Legislature in an appropriations
5459 act, to political subdivisions of the state to implement the measures described in Subsections
5460 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

5461 (ii) Money transferred to the Department of Natural Resources under Subsection
5462 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
5463 person to list or attempt to have listed a species as threatened or endangered under the
5464 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

5465 (iii) At the end of each fiscal year:

5466 (A) 50% of any unexpended designated sales and use tax revenue shall lapse to the
5467 Water Resources Conservation and Development Fund created in Section 73-10-24;

5468 (B) 25% of any unexpended designated sales and use tax revenue shall lapse to the
5469 Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

5470 (C) 25% of any unexpended designated sales and use tax revenue shall lapse to the
5471 Drinking Water Loan Program Subaccount created in Section 73-10c-5.

5472 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
5473 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
5474 created in Section 4-18-106.

5475 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
5476 in Subsection (4)(a) shall be transferred each year as designated sales and use tax revenue to
5477 the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for
5478 the adjudication of water rights.

5479 (ii) At the end of each fiscal year:

5480 (A) 50% of any unexpended designated sales and use tax revenue shall lapse to the
5481 Water Resources Conservation and Development Fund created in Section 73-10-24;

5482 (B) 25% of any unexpended designated sales and use tax revenue shall lapse to the
5483 Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

5484 (C) 25% of any unexpended designated sales and use tax revenue shall lapse to the
5485 Drinking Water Loan Program Subaccount created in Section 73-10c-5.

5486 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
5487 in Subsection (4)(a) shall be deposited into the Water Resources Conservation and
5488 Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

5489 (ii) In addition to the uses allowed of the Water Resources Conservation and
5490 Development Fund under Section 73-10-24, the Water Resources Conservation and
5491 Development Fund may also be used to:

5492 (A) conduct hydrologic and geotechnical investigations by the Division of Water
5493 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
5494 quantifying surface and ground water resources and describing the hydrologic systems of an
5495 area in sufficient detail so as to enable local and state resource managers to plan for and
5496 accommodate growth in water use without jeopardizing the resource;

5497 (B) fund state required dam safety improvements; and

5498 (C) protect the state's interest in interstate water compact allocations, including the
5499 hiring of technical and legal staff.

5500 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
5501 in Subsection (4)(a) shall be deposited into the Utah Wastewater Loan Program Subaccount
5502 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

5503 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
5504 in Subsection (4)(a) shall be deposited into the Drinking Water Loan Program Subaccount
5505 created in Section 73-10c-5 for use by the Division of Drinking Water to:

5506 (i) provide for the installation and repair of collection, treatment, storage, and
5507 distribution facilities for any public water system, as defined in Section 19-4-102;

5508 (ii) develop underground sources of water, including springs and wells; and

5509 (iii) develop surface water sources.

5510 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
5511 2006, the difference between the following amounts shall be expended as provided in this
5512 Subsection (5), if that difference is greater than \$1:

5513 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
5514 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

5515 (ii) \$17,500,000.

5516 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

5517 (A) transferred each fiscal year to the Department of Natural Resources as designated
5518 sales and use tax revenue; and

5519 (B) expended by the Department of Natural Resources for watershed rehabilitation or
5520 restoration.

5521 (ii) At the end of each fiscal year, 100% of any unexpended designated sales and use
5522 tax revenue described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation
5523 and Development Fund created in Section 73-10-24.

5524 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
5525 remaining difference described in Subsection (5)(a) shall be:

5526 (A) transferred each fiscal year to the Division of Water Resources as designated sales
5527 and use tax revenue; and

5528 (B) expended by the Division of Water Resources for cloud-seeding projects
5529 authorized by Title 73, Chapter 15, Modification of Weather.

5530 (ii) At the end of each fiscal year, 100% of any unexpended designated sales and use
5531 tax revenue described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation
5532 and Development Fund created in Section 73-10-24.

5533 (d) After making the transfers required by Subsections (5)(b) and (c), 85% of the
5534 remaining difference described in Subsection (5)(a) shall be deposited into the Water
5535 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
5536 Division of Water Resources for:

5537 (i) preconstruction costs:

5538 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
5539 26, Bear River Development Act; and

5540 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
5541 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

5542 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
5543 Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) After making the transfers required by Subsections (5)(b) and (c), 15% of the remaining difference described in Subsection (5)(a) shall be deposited each year into the Water Rights Restricted Account created by Section 73-2-1.6.

(6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited as follows:

(a) for fiscal year 2020-21 only:

(i) 20% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 80% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103; and

(b) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103.

(7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(A) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(e)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the

current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (7)(a) equal to the product of:

(A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (7)(a) would exceed 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection (7)(a).

(iii) Subject to Subsection (7)(b)(iv)(E), in all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year under Subsection (7)(a).

(iv) (A) As used in this Subsection (7)(b)(iv), "additional growth revenue" means the amount of relevant revenue collected in the current fiscal year that exceeds by more than 3% the relevant revenue collected in the previous fiscal year.

(B) As used in this Subsection (7)(b)(iv), "combined amount" means the combined total amount of money deposited into the Cottonwood Canyons fund under Subsections (7)(b)(iv)(F) and (8)(d)(vi) in any single fiscal year.

(C) As used in this Subsection (7)(b)(iv), "Cottonwood Canyons fund" means the Cottonwood Canyons Transportation Investment Fund created in Subsection [72-2-124\(10\)](#).

5606 (D) As used in this Subsection (7)(b)(iv), "relevant revenue" means the portion of taxes
5607 listed under Subsection (3)(a) that equals 17% of the revenue collected from taxes described in
5608 Subsections (7)(a)(i)(A) through (D).

5609 (E) For a fiscal year beginning on or after July 1, 2020, the commission shall annually
5610 reduce the deposit under Subsection (7)(b)(iii) into the Transportation Investment Fund of 2005
5611 by an amount equal to the amount of the deposit under this Subsection (7)(b)(iv) to the
5612 Cottonwood Canyons fund in the previous fiscal year plus 25% of additional growth revenue,
5613 subject to the limit in Subsection (7)(b)(iv)(F).

5614 (F) The commission shall annually deposit the amount described in Subsection
5615 (7)(b)(iv)(E) into the Cottonwood Canyons fund, subject to an annual maximum combined
5616 amount for any single fiscal year of \$20,000,000.

5617 (G) If the amount of relevant revenue declines in a fiscal year compared to the previous
5618 fiscal year, the commission shall decrease the amount of the contribution to the Cottonwood
5619 Canyons fund under this Subsection (7)(b)(iv) in the same proportion as the decline in relevant
5620 revenue.

5621 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under
5622 Subsections (6) and (7), and subject to Subsections (8)(b) and (d)(v), for a fiscal year beginning
5623 on or after July 1, 2018, the commission shall annually deposit into the Transportation
5624 Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under
5625 Subsection (3)(a) in an amount equal to 3.68% of the revenues collected from the following
5626 taxes:

- 5627 (i) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;
5628 (ii) the tax imposed by Subsection (2)(b)(i);
5629 (iii) the tax imposed by Subsection (2)(c)(i); and
5630 (iv) the tax imposed by Subsection (2)(e)(i)(A)(I).

5631 (b) For a fiscal year beginning on or after July 1, 2019, the commission shall annually
5632 reduce the deposit into the Transportation Investment Fund of 2005 under Subsection (8)(a) by
5633 an amount that is equal to 35% of the amount of revenue generated in the current fiscal year by
5634 the portion of the tax imposed on motor and special fuel that is sold, used, or received for sale
5635 or use in this state that exceeds 29.4 cents per gallon.

5636 (c) The commission shall annually deposit the amount described in Subsection (8)(b)

into the Transit Transportation Investment Fund created in Section 72-2-124.

(d) (i) As used in this Subsection (8)(d), "additional growth revenue" means the amount of relevant revenue collected in the current fiscal year that exceeds by more than 3% the relevant revenue collected in the previous fiscal year.

(ii) As used in this Subsection (8)(d), "combined amount" means the combined total amount of money deposited into the Cottonwood Canyons fund under Subsections (7)(b)(iv)(F) and (8)(d)(vi) in any single fiscal year.

(iii) As used in this Subsection (8)(d), "Cottonwood Canyons fund" means the Cottonwood Canyons Transportation Investment Fund created in Subsection 72-2-124(10).

(iv) As used in this Subsection (8)(d), "relevant revenue" means the portion of taxes listed under Subsection (3)(a) that equals 3.68% of the revenue collected from taxes described in Subsections (8)(a)(i) through (iv).

(v) For a fiscal year beginning on or after July 1, 2020, the commission shall annually reduce the deposit under Subsection (8)(a) into the Transportation Investment Fund of 2005 by an amount equal to the amount of the deposit under this Subsection (8)(d) to the Cottonwood Canyons fund in the previous fiscal year plus 25% of additional growth revenue, subject to the limit in Subsection (8)(d)(vi).

(vi) The commission shall annually deposit the amount described in Subsection (8)(d)(v) into the Cottonwood Canyons fund, subject to an annual maximum combined amount for any single fiscal year of \$20,000,000.

(vii) If the amount of relevant revenue declines in a fiscal year compared to the previous fiscal year, the commission shall decrease the amount of the contribution to the Cottonwood Canyons fund under this Subsection (8)(d) in the same proportion as the decline in relevant revenue.

(9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(b), and in addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of revenue described as follows:

5668 (i) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a .05%
5669 tax rate on the transactions described in Subsection (1); and

5670 (ii) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05%
5671 tax rate on the transactions described in Subsection (1).

5672 (b) For purposes of Subsection (10)(a), the Division of Finance may not deposit into
5673 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or
5674 charged for food and food ingredients, except for tax revenue generated by a bundled
5675 transaction attributable to food and food ingredients and tangible personal property other than
5676 food and food ingredients described in Subsection (2)(e).

5677 (11) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the
5678 fiscal year during which the Division of Finance receives notice under Section [63N-2-510](#) that
5679 construction on a qualified hotel, as defined in Section [63N-2-502](#), has begun, the Division of
5680 Finance shall, for two consecutive fiscal years, annually deposit \$1,900,000 of the revenue
5681 generated by the taxes listed under Subsection (3)(a) into the Hotel Impact Mitigation Fund,
5682 created in Section [63N-2-512](#).

5683 (12) (a) The rate specified in this subsection is 0.15%.

5684 (b) Notwithstanding Subsection (3)(a), the Division of Finance shall, for a fiscal year
5685 beginning on or after July 1, 2019, annually transfer the amount of revenue collected from the
5686 rate described in Subsection (12)(a) on the transactions that are subject to the sales and use tax
5687 under Subsection (2)(a)(i)(A) into the Medicaid Expansion Fund created in Section
5688 [\[26-36b-208\]](#) [26B-1-315](#).

5689 (13) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
5690 2020-21, the Division of Finance shall deposit \$200,000 into the General Fund as a dedicated
5691 credit solely for use of the Search and Rescue Financial Assistance Program created in, and
5692 expended in accordance with, Title 53, Chapter 2a, Part 11, Search and Rescue Act.

5693 (14) (a) For each fiscal year beginning with fiscal year 2020-21, the Division of
5694 Finance shall annually transfer \$1,813,400 of the revenue deposited into the Transportation
5695 Investment Fund of 2005 under Subsections (6) through (8) to the General Fund.

5696 (b) If the total revenue deposited into the Transportation Investment Fund of 2005
5697 under Subsections (6) through (8) is less than \$1,813,400 for a fiscal year, the Division of
5698 Finance shall transfer the total revenue deposited into the Transportation Investment Fund of

5699 2005 under Subsections (6) through (8) during the fiscal year to the General Fund.

5700 (15) Notwithstanding Subsection (3)(a), and as described in Section [63N-3-610](#),
5701 beginning the first day of the calendar quarter one year after the sales and use tax boundary for
5702 a housing and transit reinvestment zone is established, the commission, at least annually, shall
5703 transfer an amount equal to 15% of the sales and use tax increment within an established sales
5704 and use tax boundary, as defined in Section [63N-3-602](#), into the Transit Transportation
5705 Investment Fund created in Section [72-2-124](#).

5706 (16) Notwithstanding Subsection (3)(a), the Division of Finance shall, for a fiscal year
5707 beginning on or after July 1, 2022, transfer into the Outdoor Adventure Infrastructure
5708 Restricted Account, created in Section [51-9-902](#), a portion of the taxes listed under Subsection
5709 (3)(a) equal to 1% of the revenues collected from the following sales and use taxes:

- 5710 (a) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;
- 5711 (b) the tax imposed by Subsection (2)(b)(i);
- 5712 (c) the tax imposed by Subsection (2)(c)(i); and
- 5713 (d) the tax imposed by Subsection (2)(e)(i)(A)(I).

5714 Section 61. Section **59-12-104.10** is amended to read:

5715 **59-12-104.10. Exemption from sales tax for cannabis.**

5716 (1) As used in this section:

5717 (a) "Cannabis" means the same as that term is defined in Section [~~26-61a-102~~]
5718 [26B-4-201](#).

5719 (b) "Cannabis product" means the same as that term is defined in Section [~~26-61a-102~~]
5720 [26B-4-201](#).

5721 (c) "Medical cannabis device" means the same as that term is defined in Section
5722 [~~26-61a-102~~] [26B-4-201](#).

5723 (d) "Medical cannabis pharmacy" means the same as that term is defined in Section
5724 [~~26-61a-102~~] [26B-4-201](#).

5725 (e) "Medicinal dosage form" means the same as that term is defined in Section
5726 [~~26-61a-102~~] [26B-4-201](#).

5727 (2) In addition to the exemptions described in Section [59-12-104](#), the sale by a licensed
5728 medical cannabis pharmacy of the following is not subject to the taxes this chapter imposes:

5729 (a) cannabis in a medicinal dosage form; or

5730 (b) a cannabis product in a medicinal dosage form.

5731 (3) The sale of a medical cannabis device by a medical cannabis pharmacy is subject to
5732 the taxes this chapter imposes.

5733 Section 62. Section **59-12-801** is amended to read:

5734 **59-12-801. Definitions.**

5735 As used in this part:

5736 (1) "Emergency medical services" is as defined in Section [~~26-8a-102~~] [26B-4-101](#).

5737 (2) "Federally qualified health center" is as defined in 42 U.S.C. Sec. 1395x.

5738 (3) "Freestanding urgent care center" means a facility that provides outpatient health
5739 care service:

5740 (a) on an as-needed basis, without an appointment;

5741 (b) to the public;

5742 (c) for the diagnosis and treatment of a medical condition if that medical condition
5743 does not require hospitalization or emergency intervention for a life threatening or potentially
5744 permanently disabling condition; and

5745 (d) including one or more of the following services:

5746 (i) a medical history physical examination;

5747 (ii) an assessment of health status; or

5748 (iii) treatment:

5749 (A) for a variety of medical conditions; and

5750 (B) that is commonly offered in a physician's office.

5751 (4) "Nursing care facility" is as defined in Section [~~26-21-2~~] [26B-2-201](#).

5752 (5) "Rural city hospital" means a hospital owned by a city that is located within a third,
5753 fourth, fifth, or sixth class county.

5754 (6) "Rural county health care facility" means a:

5755 (a) rural county hospital; or

5756 (b) rural county nursing care facility.

5757 (7) "Rural county hospital" means a hospital owned by a county that is:

5758 (a) a third, fourth, fifth, or sixth class county, as defined in Section [17-50-501](#); and

5759 (b) located outside of a standard metropolitan statistical area, as designated by the
5760 United States Bureau of the Census.

- 5761 (8) "Rural county nursing care facility" means a nursing care facility owned by:
5762 (a) a county that is:
5763 (i) a third, fourth, fifth, or sixth class county, as defined in Section 17-50-501; and
5764 (ii) located outside of a standard metropolitan statistical area, as designated by the
5765 United States Census Bureau; or
5766 (b) a special service district if the special service district is:
5767 (i) created for the purpose of operating the nursing care facility; and
5768 (ii) within a county that is:
5769 (A) a third, fourth, fifth, or sixth class county, as defined in Section 17-50-501; and
5770 (B) located outside of a standard metropolitan statistical area, as designated by the
5771 United States Census Bureau.
5772 (9) "Rural emergency medical services" means emergency medical services that are
5773 provided by a county that is:
5774 (a) a fifth or sixth class county, as defined in Section 17-50-501; and
5775 (b) located outside of a standard metropolitan statistical area, as designated by the
5776 United States Census Bureau.
5777 (10) "Rural health clinic" is as defined in 42 U.S.C. Sec. 1395x.
5778 Section 63. Section 59-14-807 is amended to read:
5779 **59-14-807. Electronic Cigarette Substance and Nicotine Product Tax Restricted**
5780 **Account.**
5781 (1) There is created within the General Fund a restricted account known as the
5782 "Electronic Cigarette Substance and Nicotine Product Tax Restricted Account."
5783 (2) The Electronic Cigarette Substance and Nicotine Product Tax Restricted Account
5784 consists of:
5785 (a) revenues collected from the tax imposed by Section 59-14-804; and
5786 (b) amounts appropriated by the Legislature.
5787 (3) For each fiscal year, beginning with fiscal year 2021, and subject to appropriation
5788 by the Legislature, the Division of Finance shall distribute from the Electronic Cigarette
5789 Substance and Nicotine Product Tax Restricted Account:
5790 (a) \$2,000,000 which shall be allocated to the local health departments by the
5791 Department of ~~[Health]~~ Health and Human Services using the formula created in accordance

5792 with Section [26A-1-116](#);

5793 (b) \$2,000,000 to the Department of [~~Health~~] Health and Human Services for statewide
5794 cessation programs and prevention education;

5795 (c) \$1,180,000 to the Department of Public Safety for law enforcement officers aimed
5796 at disrupting organizations and networks that provide tobacco products, electronic cigarette
5797 products, nicotine products, and other illegal controlled substances to minors;

5798 (d) \$3,000,000 which shall be allocated to the local health departments by the
5799 Department of [~~Health~~] Health and Human Services using the formula created in accordance
5800 with Section [26A-1-116](#);

5801 (e) \$5,084,200 to the State Board of Education for school-based prevention programs;
5802 and

5803 (f) \$2,000,000 to the Department of Health and Human Services for alcohol, tobacco,
5804 and other drug prevention, reduction, cessation, and control programs that promote unified
5805 messages and make use of media outlets, including radio, newspaper, billboards, and
5806 television.

5807 (4) (a) The local health departments shall use the money received in accordance with
5808 Subsection (3)(a) for enforcing:

5809 (i) the regulation provisions described in Section [~~26-57-103~~] [26B-7-505](#);

5810 (ii) the labeling requirement described in Section [~~26-57-104~~] [26B-7-505](#); and

5811 (iii) the penalty provisions described in Section [~~26-62-305~~] [26B-7-518](#).

5812 (b) The Department of [~~Health~~] Health and Human Services shall use the money
5813 received in accordance with Subsection (3)(b) for the Youth Electronic Cigarette, Marijuana,
5814 and Other Drug Prevention Program created in Section [~~26-7-10~~] [26B-1-428](#).

5815 (c) The local health departments shall use the money received in accordance with
5816 Subsection (3)(d) to issue grants under the Electronic Cigarette, Marijuana, and Other Drug
5817 Prevention Grant Program created in Section [26A-1-129](#).

5818 (d) The State Board of Education shall use the money received in accordance with
5819 Subsection (3)(e) to distribute to local education agencies to pay for:

5820 (i) stipends for positive behaviors specialists as described in Subsection
5821 [53G-10-407](#)(4)(a)(i);

5822 (ii) the cost of administering the positive behaviors plan as described in Subsection

5823 53G-10-407(4)(a)(ii); and

5824 (iii) the cost of implementing an Underage Drinking and Substance Abuse Prevention
5825 Program in grade 4 or 5, as described in Subsection 53G-10-406(3)(b).

5826 (5) (a) The fund shall earn interest.

5827 (b) All interest earned on fund money shall be deposited into the fund.

5828 (6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette
5829 Substance and Nicotine Product Tax Restricted Account after the distribution described in
5830 Subsection (3) may only be used for programs and activities related to the prevention and
5831 cessation of electronic cigarette, nicotine products, marijuana, and other drug use.

5832 Section 64. Section 61-1-13 is amended to read:

5833 **61-1-13. Definitions.**

5834 (1) As used in this chapter:

5835 (a) "Affiliate" means a person that, directly or indirectly, through one or more
5836 intermediaries, controls or is controlled by, or is under common control with a person
5837 specified.

5838 (b) (i) "Agent" means an individual other than a broker-dealer who represents a
5839 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

5840 (ii) "Agent" does not include an individual who represents:

5841 (A) an issuer, who receives no commission or other remuneration, directly or
5842 indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and
5843 who effects transactions:

5844 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

5845 (II) exempted by Subsection 61-1-14(2);

5846 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(F) of the
5847 Securities Act of 1933; or

5848 (IV) with existing employees, partners, officers, or directors of the issuer; or

5849 (B) a broker-dealer in effecting transactions in this state limited to those transactions
5850 described in Section 15(h)(2) of the Securities Exchange Act of 1934.

5851 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
5852 similar status or performing similar functions, is an agent only if the partner, officer, director,
5853 or person otherwise comes within the definition of "agent."

5854 (iv) "Agent" does not include a person described in Subsection (3).
5855 (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions
5856 in securities for the account of others or for the person's own account.
5857 (ii) "Broker-dealer" does not include:
5858 (A) an agent;
5859 (B) an issuer;
5860 (C) a depository institution or trust company;
5861 (D) a person who has no place of business in this state if:
5862 (I) the person effects transactions in this state exclusively with or through:
5863 (Aa) the issuers of the securities involved in the transactions;
5864 (Bb) other broker-dealers;
5865 (Cc) a depository institution, whether acting for itself or as a trustee;
5866 (Dd) a trust company, whether acting for itself or as a trustee;
5867 (Ee) an insurance company, whether acting for itself or as a trustee;
5868 (Ff) an investment company, as defined in the Investment Company Act of 1940,
5869 whether acting for itself or as a trustee;
5870 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
5871 (Hh) another financial institution or institutional buyer, whether acting for itself or as a
5872 trustee; or
5873 (II) during any period of 12 consecutive months the person does not direct more than
5874 15 offers to sell or buy into this state in any manner to persons other than those specified in
5875 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
5876 (E) a general partner who organizes and effects transactions in securities of three or
5877 fewer limited partnerships, of which the person is the general partner, in any period of 12
5878 consecutive months;
5879 (F) a person whose participation in transactions in securities is confined to those
5880 transactions made by or through a broker-dealer licensed in this state;
5881 (G) a person who is a principal broker or associate broker licensed in this state and
5882 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel
5883 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire
5884 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of

5885 indebtedness secured thereby, is offered and sold as a unit;

5886 (H) a person effecting transactions in commodity contracts or commodity options;

5887 (I) a person described in Subsection (3); or

5888 (J) other persons as the division, by rule or order, may designate, consistent with the

5889 public interest and protection of investors, as not within the intent of this Subsection (1)(c).

5890 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or

5891 acquisition of a security or interest in a security for value.

5892 (e) "Commission" means the Securities Commission created in Section [61-1-18.5](#).

5893 (f) "Commodity" means, except as otherwise specified by the division by rule:

5894 (i) an agricultural, grain, or livestock product or byproduct, except real property or a

5895 timber, agricultural, or livestock product grown or raised on real property and offered or sold

5896 by the owner or lessee of the real property;

5897 (ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair
5898 market value is at least 15% greater than the value of the metal it contains;

5899 (iii) a gem or gemstone, whether characterized as precious, semi-precious, or
5900 otherwise;

5901 (iv) a fuel, whether liquid, gaseous, or otherwise;

5902 (v) a foreign currency; and

5903 (vi) all other goods, articles, products, or items of any kind, except a work of art

5904 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
5905 owner of the work.

5906 (g) (i) "Commodity contract" means an account, agreement, or contract for the
5907 purchase or sale, primarily for speculation or investment purposes and not for use or
5908 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
5909 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
5910 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
5911 contract, installment or margin contract, leverage contract, or otherwise.

5912 (ii) A commodity contract offered or sold shall, in the absence of evidence to the
5913 contrary, be presumed to be offered or sold for speculation or investment purposes.

5914 (iii) (A) A commodity contract may not include a contract or agreement that requires,
5915 and under which the purchaser receives, within 28 calendar days from the payment in good

5916 funds any portion of the purchase price, physical delivery of the total amount of each
5917 commodity to be purchased under the contract or agreement.

5918 (B) A purchaser is not considered to have received physical delivery of the total
5919 amount of each commodity to be purchased under the contract or agreement when the
5920 commodity or commodities are held as collateral for a loan or are subject to a lien of any
5921 person when the loan or lien arises in connection with the purchase of each commodity or
5922 commodities.

5923 (h) (i) "Commodity option" means an account, agreement, or contract giving a party to
5924 the option the right but not the obligation to purchase or sell one or more commodities or one
5925 or more commodity contracts, or both whether characterized as an option, privilege, indemnity,
5926 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

5927 (ii) "Commodity option" does not include an option traded on a national securities
5928 exchange registered:

5929 (A) with the Securities and Exchange Commission; or

5930 (B) on a board of trade designated as a contract market by the Commodity Futures
5931 Trading Commission.

5932 (i) "Depository institution" means the same as that term is defined in Section 7-1-103.

5933 (j) "Director" means the director of the division appointed in accordance with Section
5934 61-1-18.

5935 (k) "Division" means the Division of Securities established by Section 61-1-18.

5936 (l) "Executive director" means the executive director of the Department of Commerce.

5937 (m) "Federal covered adviser" means a person who:

5938 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or

5939 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of
5940 the Investment Advisers Act of 1940.

5941 (n) "Federal covered security" means a security that is a covered security under Section
5942 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of
5943 the Securities Act of 1933.

5944 (o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

5945 (p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
5946 securities, or dividends as to equity securities.

5947 (q) (i) "Investment adviser" means a person who:

5948 (A) for compensation, engages in the business of advising others, either directly or
5949 through publications or writings, as to the value of securities or as to the advisability of
5950 investing in, purchasing, or selling securities; or

5951 (B) for compensation and as a part of a regular business, issues or promulgates
5952 analyses or reports concerning securities.

5953 (ii) "Investment adviser" includes a financial planner or other person who:

5954 (A) as an integral component of other financially related services, provides the
5955 investment advisory services described in Subsection (1)(q)(i) to others as part of a business;

5956 (B) holds the person out as providing the investment advisory services described in
5957 Subsection (1)(q)(i) to others; or

5958 (C) holds the person out as a financial adviser, financial consultant, or any other similar
5959 title as the division may specify in rule made in accordance with Title 63G, Chapter 3, Utah
5960 Administrative Rulemaking Act, in any way as to imply that the person is generally engaged in
5961 an investment advisory business, including a person who does not hold a securities license and
5962 uses a title described in this Subsection (1)(q)(ii)(C) in any advertising or marketing material.

5963 (iii) "Investment adviser" does not include:

5964 (A) an investment adviser representative;

5965 (B) a depository institution or trust company;

5966 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is
5967 solely incidental to the practice of the profession;

5968 (D) a broker-dealer or its agent whose performance of these services is solely
5969 incidental to the conduct of its business as a broker-dealer and who receives no special
5970 compensation for the services;

5971 (E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or
5972 business or financial publication or service, of general, regular, and paid circulation, whether
5973 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
5974 the rendering of advice on the basis of the specific investment situation of each client;

5975 (F) a person who is a federal covered adviser;

5976 (G) a person described in Subsection (3); or

5977 (H) such other persons not within the intent of this Subsection (1)(q) as the division

5978 may by rule or order designate.

5979 (r) (i) "Investment adviser representative" means a partner, officer, director of, or a
5980 person occupying a similar status or performing similar functions, or other individual, except
5981 clerical or ministerial personnel, who:

5982 (A) (I) is employed by or associated with an investment adviser who is licensed or
5983 required to be licensed under this chapter; or

5984 (II) has a place of business located in this state and is employed by or associated with a
5985 federal covered adviser; and

5986 (B) does any of the following:

5987 (I) makes a recommendation or otherwise renders advice regarding securities;

5988 (II) manages accounts or portfolios of clients;

5989 (III) determines which recommendation or advice regarding securities should be given;

5990 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

5991 or

5992 (V) supervises employees who perform any of the acts described in this Subsection

5993 (1)(r)(i)(B).

5994 (ii) "Investment adviser representative" does not include a person described in
5995 Subsection (3).

5996 (s) "Investment contract" includes:

5997 (i) an investment in a common enterprise with the expectation of profit to be derived
5998 through the essential managerial efforts of someone other than the investor; or

5999 (ii) an investment by which:

6000 (A) an offeree furnishes initial value to an offerer;

6001 (B) a portion of the initial value is subjected to the risks of the enterprise;

6002 (C) the furnishing of the initial value is induced by the offerer's promises or
6003 representations that give rise to a reasonable understanding that a valuable benefit of some kind
6004 over and above the initial value will accrue to the offeree as a result of the operation of the
6005 enterprise; and

6006 (D) the offeree does not receive the right to exercise practical and actual control over
6007 the managerial decisions of the enterprise.

6008 (t) "Isolated transaction" means not more than a total of two transactions that occur

6009 anywhere during six consecutive months.

6010 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has
6011 outstanding a security that it has issued.

6012 (ii) With respect to a preorganization certificate or subscription, "issuer" means the one
6013 or more promoters of the person to be organized.

6014 (iii) "Issuer" means the one or more persons performing the acts and assuming duties
6015 of a depositor or manager under the provisions of the trust or other agreement or instrument
6016 under which the security is issued with respect to:

6017 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and
6018 certificates of deposit for securities; or

6019 (B) shares in an investment company without a board of directors.

6020 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
6021 similar securities serving the same purpose, "issuer" means the person by whom the equipment
6022 or property is to be used.

6023 (v) With respect to interests in partnerships, general or limited, "issuer" means the
6024 partnership itself and not the general partner or partners.

6025 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or
6026 leases or in payment out of production under the titles or leases, "issuer" means the owner of
6027 the title or lease or right of production, whether whole or fractional, who creates fractional
6028 interests therein for the purpose of sale.

6029 (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any
6030 of the following that is the subject of a life settlement:

6031 (A) a policy; or

6032 (B) the death benefit under a policy.

6033 (ii) "Life settlement interest" does not include the initial purchase from the owner by a
6034 life settlement provider.

6035 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

6036 (x) "Person" means:

6037 (i) an individual;

6038 (ii) a corporation;

6039 (iii) a partnership;

- 6040 (iv) a limited liability company;
- 6041 (v) an association;
- 6042 (vi) a joint-stock company;
- 6043 (vii) a joint venture;
- 6044 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
- 6045 (ix) an unincorporated organization;
- 6046 (x) a government; or
- 6047 (xi) a political subdivision of a government.
- 6048 (y) "Precious metal" means the following, whether in coin, bullion, or other form:
- 6049 (i) silver;
- 6050 (ii) gold;
- 6051 (iii) platinum;
- 6052 (iv) palladium;
- 6053 (v) copper; and
- 6054 (vi) such other substances as the division may specify by rule.
- 6055 (z) "Promoter" means a person who, acting alone or in concert with one or more
- 6056 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 6057 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
- 6058 is:
- 6059 (A) inscribed in a tangible medium; or
- 6060 (B) (I) stored in an electronic or other medium; and
- 6061 (II) retrievable in perceivable form.
- 6062 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
- 6063 including when "record" is used in the following phrases:
- 6064 (A) "of record";
- 6065 (B) "official record"; or
- 6066 (C) "public record."
- 6067 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
- 6068 a security or interest in a security for value.
- 6069 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of
- 6070 an offer to buy, a security or interest in a security for value.

6071 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

6072 (A) a security given or delivered with or as a bonus on account of a purchase of a
6073 security or any other thing, is part of the subject of the purchase, and is offered and sold for
6074 value;

6075 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
6076 on the stock;

6077 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
6078 or subscribe to another security of the same or another issuer is an offer or sale of that security,
6079 and also an offer of the other security, whether the right to convert or acquire is exercisable
6080 immediately or in the future;

6081 (D) a conversion or exchange of one security for another constitutes an offer or sale of
6082 the security received in a conversion or exchange, and the offer to buy or the purchase of the
6083 security converted or exchanged;

6084 (E) securities distributed as a dividend wherein the person receiving the dividend
6085 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or
6086 sale;

6087 (F) a dividend of a security of another issuer is an offer or sale; or

6088 (G) the issuance of a security under a merger, consolidation, reorganization,
6089 recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the
6090 security issued as well as the offer to buy or the purchase of a security surrendered in
6091 connection therewith, unless the sole purpose of the transaction is to change the issuer's
6092 domicile.

6093 (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

6094 (A) a good faith gift;

6095 (B) a transfer by death;

6096 (C) a transfer by termination of a trust or of a beneficial interest in a trust;

6097 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or

6098 (E) a securities split or reverse split.

6099 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment
6100 Company Act of 1940" mean the federal statutes of those names as amended before or after the
6101 effective date of this chapter.

6102 (dd) "Securities Exchange Commission" means the United States Securities Exchange
6103 Commission created by the Securities Exchange Act of 1934.

6104 (ee) (i) "Security" means a:

6105 (A) note;

6106 (B) stock;

6107 (C) treasury stock;

6108 (D) bond;

6109 (E) debenture;

6110 (F) evidence of indebtedness;

6111 (G) certificate of interest or participation in a profit-sharing agreement;

6112 (H) collateral-trust certificate;

6113 (I) preorganization certificate or subscription;

6114 (J) transferable share;

6115 (K) investment contract;

6116 (L) burial certificate or burial contract;

6117 (M) voting-trust certificate;

6118 (N) certificate of deposit for a security;

6119 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
6120 payments out of production under such a title or lease;

6121 (P) commodity contract or commodity option;

6122 (Q) interest in a limited liability company;

6123 (R) life settlement interest; or

6124 (S) in general, an interest or instrument commonly known as a "security," or a
6125 certificate of interest or participation in, temporary or interim certificate for, receipt for,
6126 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
6127 (1)(ee)(i)(A) through (R).

6128 (ii) "Security" does not include:

6129 (A) an insurance or endowment policy or annuity contract under which an insurance
6130 company promises to pay money in a lump sum or periodically for life or some other specified
6131 period;

6132 (B) an interest in a limited liability company in which the limited liability company is

formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; or

(C) (I) a whole long-term estate in real property;

(II) an undivided fractionalized long-term estate in real property that consists of 10 or fewer owners; or

(III) an undivided fractionalized long-term estate in real property that consists of more than 10 owners if, when the real property estate is subject to a management agreement:

(Aa) the management agreement permits a simple majority of owners of the real property estate to not renew or to terminate the management agreement at the earlier of the end of the management agreement's current term, or 180 days after the day on which the owners give notice of termination to the manager; and

(Bb) the management agreement prohibits, directly or indirectly, the lending of the proceeds earned from the real property estate or the use or pledge of its assets to a person or entity affiliated with or under common control of the manager.

(iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, may not establish, without more, that all members are actively engaged in the management of the limited liability company.

(ff) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(gg) (i) "Undivided fractionalized long-term estate" means the same as that term is defined in Section [57-29-102](#).

(ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

(hh) "Undue influence" means that a person uses a relationship or position of authority, trust, or confidence:

(i) that is unrelated to a relationship created:

(A) in the ordinary course of making investments regulated under this chapter; or

(B) by a licensee providing services under this chapter;

(ii) that results in:

(A) an investor perceiving the person as having heightened credibility, personal

6164 trustworthiness, or dependability; or

6165 (B) the person having special access to or control of an investor's financial resources,
6166 information, or circumstances; and

6167 (iii) to:

6168 (A) exploit the trust, dependence, or fear of the investor;

6169 (B) knowingly assist or cause another to exploit the trust, dependence, or fear of the
6170 investor; or

6171 (C) gain control deceptively over the decision making of the investor.

6172 (ii) "Vulnerable adult" means the same as that term is defined in Section [~~62A-3-301~~]
6173 [26B-6-201](#).

6174 (jj) "Whole long-term estate" means a person owns or persons through joint tenancy
6175 own real property through a fee estate.

6176 (kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of
6177 legal holidays listed in Section [63G-1-301](#).

6178 (2) A term not defined in this section shall have the meaning as established by division
6179 rule. The meaning of a term neither defined in this section nor by rule of the division shall be
6180 the meaning commonly accepted in the business community.

6181 (3) (a) This Subsection (3) applies to the offer or sale of a real property estate
6182 exempted from the definition of security under Subsection (1)(ee)(ii)(C).

6183 (b) A person who, directly or indirectly receives compensation in connection with the
6184 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
6185 broker-dealer, investment adviser, or investment adviser representative under this chapter if
6186 that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

6187 (i) a principal broker;

6188 (ii) an associate broker; or

6189 (iii) a sales agent.

6190 Section 65. Section **61-1-201** is amended to read:

6191 **61-1-201. Definitions.**

6192 As used in this part:

6193 (1) "Adult Protective Services" means the same as that term is defined in Section
6194 [~~62A-3-301~~] [26B-6-201](#).

- 6195 (2) "Eligible adult" means:
- 6196 (a) an individual who is 65 years [~~of age~~] old or older; or
- 6197 (b) a vulnerable adult as defined in Section [~~62A-3-301~~] 26B-6-201.
- 6198 (3) "Financial exploitation of an eligible adult" means:
- 6199 (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money,
- 6200 assets, or other property of an eligible adult; or
- 6201 (b) an act or omission, including through a power of attorney, guardianship, or
- 6202 conservatorship of an eligible adult, to:
- 6203 (i) obtain control, through deception, intimidation, or undue influence, over an eligible
- 6204 adult's money, assets, or other property to deprive the eligible adult of the ownership, use,
- 6205 benefit, or possession of the eligible adult's money, assets, or other property; or
- 6206 (ii) convert an eligible adult's money, assets, or other property to deprive the eligible
- 6207 adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or other
- 6208 property.
- 6209 (4) "Law enforcement agency" means the same as that term is defined in Section
- 6210 53-1-102.
- 6211 (5) "Qualified individual" means:
- 6212 (a) an agent;
- 6213 (b) an investment adviser representative; or
- 6214 (c) an individual who serves in a supervisory, compliance, or legal capacity for a
- 6215 broker-dealer or an investment adviser.
- 6216 Section 66. Section **63A-5b-303** is amended to read:
- 6217 **63A-5b-303. Duties and authority of division.**
- 6218 (1) (a) The division shall:
- 6219 (i) subject to Subsection (1)(b), supervise and control the allocation of space, in
- 6220 accordance with legislative directive through annual appropriations acts, other legislation, or
- 6221 statute, to agencies in all buildings or space owned, leased, or rented by or to the state, except
- 6222 as provided in Subsection (3) or as otherwise provided by statute;
- 6223 (ii) assure the efficient use of all building space under the division's supervision and
- 6224 control;
- 6225 (iii) acquire title to all real property, buildings, fixtures, and appurtenances for use by

6226 the state or an agency, as authorized by the Legislature through an appropriation act, other
6227 legislation, or statute, subject to Subsection (1)(c);

6228 (iv) except as otherwise provided by statute, hold title to all real property, buildings,
6229 fixtures, and appurtenances owned by the state or an agency;

6230 (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing
6231 title to or an interest in property belonging to the state or to the state's departments, except
6232 institutions of higher education and the trust lands administration;

6233 (vi) (A) periodically conduct a market analysis of proposed rates and fees; and
6234 (B) include in a market analysis a comparison of the division's rates and fees with the
6235 rates and fees of other public or private sector providers of comparable services, if rates and
6236 fees for comparable services are reasonably available;

6237 (vii) fulfill the division's responsibilities under Part 10, Energy Conservation and
6238 Efficiency, including responsibilities:

6239 (A) to implement the state building energy efficiency program under Section
6240 [63A-5b-1002](#); and

6241 (B) related to the approval of loans from the State Facility Energy Efficiency Fund
6242 under Section [63A-5b-1003](#);

6243 (viii) convey, lease, or dispose of the real property, water rights, or water shares
6244 associated with the Utah State Developmental Center if directed to do so by the Utah State
6245 Developmental Center board, as provided in Subsection [~~62A-5-206.6(2)~~] [26B-6-507\(2\)](#); and

6246 (ix) take all other action that the division is required to do under this chapter or other
6247 applicable statute.

6248 (b) In making an allocation of space under Subsection (1)(a)(i), the division shall
6249 conduct one or more studies to determine the actual needs of each agency.

6250 (c) The division may, without legislative approval, acquire title to real property for use
6251 by the state or an agency if the acquisition cost does not exceed \$500,000.

6252 (2) The division may:

6253 (a) sue and be sued;

6254 (b) as authorized by the Legislature, buy, lease, or otherwise acquire, by exchange or
6255 otherwise, and hold real or personal property necessary for the discharge of the division's
6256 duties; and

- 6257 (c) take all other action necessary for carrying out the purposes of this chapter.
- 6258 (3) (a) The division may not supervise or control the allocation of space for an entity in
6259 the public education system.
- 6260 (b) The supervision and control of the legislative area is reserved to the Legislature.
- 6261 (c) The supervision and control of capitol hill facilities and capitol hill grounds is
6262 reserved to the State Capitol Preservation Board.
- 6263 (d) (i) Subject to Subsection (3)(d)(ii), the supervision and control of the allocation of
6264 space for an institution of higher education is reserved to the Utah Board of Higher Education.
- 6265 (ii) The Utah Board of Higher Education shall consult and cooperate with the division
6266 in the establishment and enforcement of standards for the supervision and control of the
6267 allocation of space for an institution of higher education.
- 6268 (e) (i) Subject to Subsection (3)(e)(ii), the supervision and control of the allocation of
6269 space for the courts of record listed in Subsection 78A-1-101(1) is reserved to the
6270 Administrative Office of the Courts referred to in Subsection 78A-2-108(3).
- 6271 (ii) The Administrative Office of the Courts shall consult and cooperate with the
6272 division in the establishment and enforcement of standards for the supervision and control of
6273 the allocation of space for the courts of record listed in Subsection 78A-1-101(1).
- 6274 (4) Before the division charges a rate, fee, or other amount for a service provided by
6275 the division's internal service fund to an executive branch agency, or to a service subscriber
6276 other than an executive branch agency, the division shall:
- 6277 (a) submit an analysis of the proposed rate, fee, or other amount to the rate committee
6278 created in Section 63A-1-114; and
- 6279 (b) obtain the approval of the Legislature as required by Section 63J-1-410 or
6280 63J-1-504.
- 6281 Section 67. Section 63A-5b-607 is amended to read:
- 6282 **63A-5b-607. Health insurance requirements -- Penalties.**
- 6283 (1) As used in this section:
- 6284 (a) "Aggregate amount" means the dollar sum of all contracts, change orders, and
6285 modifications for a single project.
- 6286 (b) "Change order" means the same as that term is defined in Section 63G-6a-103.
- 6287 (c) "Eligible employee" means an employee, as defined in Section 34A-2-104, who:

- 6288 (i) works at least 30 hours per calendar week; and
6289 (ii) meets the employer eligibility waiting period for qualified health insurance
6290 coverage provided by the employer.
- 6291 (d) "Health benefit plan" means:
6292 (i) the same as that term is defined in Section [31A-1-301](#); or
6293 (ii) an employee welfare benefit plan:
6294 (A) established under the Employee Retirement Income Security Act of 1974, 29
6295 U.S.C. Sec. 1001 et seq.;
6296 (B) for an employer with 100 or more employees; and
6297 (C) in which the employer establishes a self-funded or partially self-funded group
6298 health plan to provide medical care for the employer's employees and dependents of the
6299 employees.
- 6300 (e) "Qualified health insurance coverage" means the same as that term is defined in
6301 Section ~~[26-40-115]~~ [26B-3-909](#).
- 6302 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).
- 6303 (g) "Third party administrator" or "administrator" means the same as that term is
6304 defined in Section [31A-1-301](#).
- 6305 (2) Except as provided in Subsection (3), the requirements of this section apply to:
6306 (a) a contractor of a design or construction contract with the division if the prime
6307 contract is in an aggregate amount of \$2,000,000 or more; and
6308 (b) a subcontractor of a contractor of a design or construction contract with the division
6309 if the subcontract is in an aggregate amount of \$1,000,000 or more.
- 6310 (3) The requirements of this section do not apply to a contractor or subcontractor if:
6311 (a) the application of this section jeopardizes the division's receipt of federal funds;
6312 (b) the contract is a sole source contract, as defined in Section [63G-6a-103](#); or
6313 (c) the contract is the result of an emergency procurement.
- 6314 (4) A person who intentionally uses a change order, contract modification, or multiple
6315 contracts to circumvent the requirements of this section is guilty of an infraction.
- 6316 (5) (a) A contractor that is subject to the requirements of this section shall:
6317 (i) make and maintain an offer of qualified health coverage for the contractor's eligible
6318 employees and the eligible employees' dependents; and

6319 (ii) submit to the director a written statement demonstrating that the contractor is in
6320 compliance with Subsection (5)(a)(i).

6321 (b) A statement under Subsection (5)(a)(ii):

6322 (i) shall be from:

6323 (A) an actuary selected by the contractor or the contractor's insurer;

6324 (B) an underwriter who is responsible for developing the employer group's premium
6325 rates; or

6326 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
6327 an actuary or underwriter selected by a third party administrator; and

6328 (ii) may not be created more than one year before the day on which the contractor
6329 submits the statement to the director.

6330 (c) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
6331 shall provide the actuary or underwriter selected by an administrator, as described in
6332 Subsection (5)(b)(i)(C), sufficient information to determine whether the contractor's
6333 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
6334 requirements of qualified health coverage.

6335 (ii) A contractor may not make a change to the contractor's contribution to the health
6336 benefit plan, unless the contractor provides notice to:

6337 (A) the actuary or underwriter selected by an administrator, as described in Subsection
6338 (5)(b)(i)(C), for the actuary or underwriter to update the written statement described in
6339 Subsection (5)(a) in compliance with this section; and

6340 (B) the division.

6341 (6) (a) A contractor that is subject to the requirements of this section shall:

6342 (i) ensure that each contract the contractor enters with a subcontractor that is subject to
6343 the requirements of this section requires the subcontractor to obtain and maintain an offer of
6344 qualified health coverage for the subcontractor's eligible employees and the eligible employees'
6345 dependents during the duration of the subcontract; and

6346 (ii) obtain from a subcontractor referred to in Subsection (6)(a)(i) a written statement
6347 demonstrating that the subcontractor offers qualified health coverage to eligible employees and
6348 eligible employees' dependents.

6349 (b) A statement under Subsection (6)(a)(ii):

6350 (i) shall be from:

6351 (A) an actuary selected by the subcontractor or the subcontractor's insurer;

6352 (B) an underwriter who is responsible for developing the employer group's premium

6353 rates; or

6354 (C) if the subcontractor provides a health benefit plan described in Subsection

6355 (1)(d)(ii), an actuary or underwriter selected by an administrator; and

6356 (ii) may not be created more than one year before the day on which the contractor

6357 obtains the statement from the subcontractor.

6358 (7) (a) (i) A contractor that fails to maintain an offer of qualified health coverage

6359 during the duration of the contract as required in this section is subject to penalties in

6360 accordance with administrative rules made by the division under this section, in accordance

6361 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6362 (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain

6363 and maintain an offer of qualified health coverage as required in this section.

6364 (b) (i) A subcontractor that fails to obtain and maintain an offer of qualified health

6365 coverage during the duration of the subcontract as required in this section is subject to penalties

6366 in accordance with administrative rules made by the division under this section, in accordance

6367 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6368 (ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain

6369 an offer of qualified health coverage as required in this section.

6370 (8) The division shall make rules:

6371 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

6372 (b) in coordination with:

6373 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

6374 (ii) the Department of Natural Resources in accordance with Section [79-2-404](#);

6375 (iii) a public transit district in accordance with Section [17B-2a-818.5](#);

6376 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);

6377 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and

6378 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;

6379 and

6380 (c) that establish:

6381 (i) the requirements and procedures for a contractor and a subcontractor to demonstrate
6382 compliance with this section, including:

6383 (A) a provision that a contractor or subcontractor's compliance with this section is
6384 subject to an audit by the division or the Office of the Legislative Auditor General;

6385 (B) a provision that a contractor that is subject to the requirements of this section
6386 obtain a written statement as provided in Subsection (5); and

6387 (C) a provision that a subcontractor that is subject to the requirements of this section
6388 obtain a written statement as provided in Subsection (6);

6389 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
6390 violates the provisions of this section, which may include:

6391 (A) a three-month suspension of the contractor or subcontractor from entering into a
6392 future contract with the state upon the first violation;

6393 (B) a six-month suspension of the contractor or subcontractor from entering into a
6394 future contract with the state upon the second violation;

6395 (C) an action for debarment of the contractor or subcontractor in accordance with
6396 Section [63G-6a-904](#) upon the third or subsequent violation; and

6397 (D) monetary penalties which may not exceed 50% of the amount necessary to
6398 purchase qualified health coverage for eligible employees and dependents of eligible
6399 employees of the contractor or subcontractor who were not offered qualified health coverage
6400 during the duration of the contract; and

6401 (iii) a website for the department to post the commercially equivalent benchmark for
6402 the qualified health coverage that is provided by the Department of ~~[Health]~~ Health and Human
6403 Services in accordance with Subsection ~~[26-40-115(2)]~~ [26B-3-909\(2\)](#).

6404 (9) During the duration of a contract, the division may perform an audit to verify a
6405 contractor or subcontractor's compliance with this section.

6406 (10) (a) Upon the division's request, a contractor or subcontractor shall provide the
6407 division:

6408 (i) a signed actuarial certification that the coverage the contractor or subcontractor
6409 offers is qualified health coverage; or

6410 (ii) all relevant documents and information necessary for the division to determine
6411 compliance with this section.

(b) If a contractor or subcontractor provides the documents and information described in Subsection (10)(a)(i), the Insurance Department shall assist the division in determining if the coverage the contractor or subcontractor offers is qualified health coverage.

(11) (a) (i) In addition to the penalties imposed under Subsection (7), a contractor or subcontractor that intentionally violates the provisions of this section is liable to an eligible employee for health care costs that would have been covered by qualified health coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (11)(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection (5) or (6); or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).

(b) An eligible employee has a private right of action against the employee's employer only as provided in this Subsection (11).

(12) The director shall cause money collected from the imposition and collection of a penalty under this section to be deposited into the Medicaid Restricted Account created by Section ~~[26-18-402]~~ [26B-1-309](#).

(13) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section [63G-6a-1602](#); or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(14) An employer's waiting period for an employee to become eligible for qualified health coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.

(15) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health

6443 coverage of a contractor or subcontractor who provides a health benefit plan described in
6444 Subsection (1)(d)(ii):

6445 (a) subject to Subsection (1)(b), is not liable for an error in the written statement,
6446 unless the administrator commits gross negligence in preparing the written statement;

6447 (b) is not liable for any error in the written statement if the administrator relied in good
6448 faith on information from the contractor or subcontractor; and

6449 (c) may require as a condition of providing the written statement that a contractor or
6450 subcontractor hold the administrator harmless for an action arising under this section.

6451 Section 68. Section **63A-5b-910** is amended to read:

6452 **63A-5b-910. Disposition of proceeds received by division from sale of vacant**
6453 **division-owned property.**

6454 (1) (a) Except as provided in Section [~~62A-5-206.7~~] 26B-1-331, the division shall pay
6455 into the state treasury the money received from the transfer of ownership or lease of vacant
6456 division-owned property.

6457 (b) Money paid into the state treasury under Subsection (1)(a):

6458 (i) becomes a part of the funds provided by law for carrying out the building program
6459 of the state; and

6460 (ii) is appropriated for the purpose described in Subsection (1)(b)(i).

6461 (2) The proceeds from the transfer of ownership or lease of vacant division-owned
6462 property belonging to or used by a particular state agency shall, to the extent practicable, be
6463 expended for the construction of buildings or in the performance of other work for the benefit
6464 of that state agency.

6465 Section 69. Section **63A-5b-1109**, which is renumbered from Section 26-29-1 is
6466 renumbered and amended to read:

6467 [~~26-29-1~~]. **63A-5b-1109. Buildings and facilities to which chapter applies --**
6468 **Standards available to interested parties -- Division of Facilities Construction and**
6469 **Management staff to advise, review, and approve plans when possible.**

6470 (1) (a) The standards in this [~~chapter~~] section apply to all buildings and facilities used
6471 by the public that are constructed or remodeled in whole or in part by the use of state funds, or
6472 the funds of any political subdivision of the state.

6473 (b) All of those buildings and facilities constructed in Utah after May 12, 1981, shall

conform to the standard prescribed in this [chapter] section except buildings, facilities, or portions of them, not intended for public use, including:

- (i) caretaker dwellings;
- (ii) service buildings; and
- (iii) heating plants.

(2) This [chapter] section applies to temporary or emergency construction as well as permanent buildings.

(3) (a) The standards established in this [chapter] section apply to the remodeling or alteration of any existing building or facility within the jurisdictions set forth in this [chapter] section where the remodeling or alteration will affect an area of the building or facility in which there are architectural barriers for persons with a physical disability.

(b) If the remodeling involves less than 50% of the space of the building or facility, only the areas being remodeled need comply with the standards.

(c) If remodeling involves 50% or more of the space of the building or facility, the entire building or facility shall be brought into compliance with the standards.

(4) (a) All individuals and organizations are encouraged to apply the standards prescribed in this [chapter] section to all buildings used by the public, but that are financed from other than public funds.

(b) The Division of Facilities Construction and Management shall:

(i) make the standards established by this [chapter] section available to interested individuals and organizations; and

(ii) upon request and to the extent possible, make available the services of the Division of Facilities Construction and Management staff to advise, review, and approve plans and specifications in order to comply with the standards of this [chapter] section.

(5) (a) This section is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of incoordination, and aging.

(b) This section is intended to make all buildings and facilities covered by this section accessible to, and functional for, persons with a physical disability.

(6) The standards of this section are the current edition of planning and design criteria to prevent architectural barriers for the aged and persons with a physical disability, as promulgated by the Division of Facilities Construction and Management.

6505 (7) The responsibility for adoption of the planning and design criteria referred to in this
6506 section, and enforcement of this section shall be as follows:

6507 (a) where state school funds are utilized, the State Board of Education;

6508 (b) where state funds are utilized, the Division of Facilities Construction and

6509 Management; and

6510 (c) where funds of political subdivisions are utilized, the governing board of the county
6511 or municipality in which the building or facility is located.

6512 Section 70. Section **63A-9-701** is amended to read:

6513 **63A-9-701. Subscription to motor pool by certain local government entities.**

6514 (1) The following local government entities may subscribe to the central motor pool
6515 service provided by the division subject to the conditions established in Subsection (2):

6516 (a) local health departments as defined in Title 26A, Chapter 1, Part 1, Local Health
6517 Department Act;

6518 (b) local substance abuse authorities as defined in Section [17-43-201](#);

6519 (c) local area agencies, as authorized by Section [~~62A-3-104~~] [26B-6-104](#), or their
6520 subcontractors who are local governmental or public entities; and

6521 (d) local mental health authorities as defined in Section [17-43-301](#).

6522 (2) The local government entities outlined in Subsection (1) may subscribe to the
6523 central motor pool service provided by the division only if:

6524 (a) the director of the local government entity determines it will result in substantial
6525 cost savings or increased efficiency to the local government entity; and

6526 (b) the central motor pool has sufficient vehicles available.

6527 Section 71. Section **63A-13-102** is amended to read:

6528 **63A-13-102. Definitions.**

6529 As used in this chapter:

6530 (1) "Abuse" means:

6531 (a) an action or practice that:

6532 (i) is inconsistent with sound fiscal, business, or medical practices; and

6533 (ii) results, or may result, in unnecessary Medicaid related costs; or

6534 (b) reckless or negligent upcoding.

6535 (2) "Claimant" means a person that:

- 6536 (a) provides a service; and
- 6537 (b) submits a claim for Medicaid reimbursement for the service.
- 6538 (3) "Department" means the Department of Health and Human Services created in
- 6539 Section [26B-1-201](#).
- 6540 (4) "Division" means the Division of [~~Medicaid and Health Financing~~] Integrated
- 6541 Healthcare, created in Section [~~26-18-2.1~~] [26B-3-102](#).
- 6542 (5) "Extrapolation" means a method of using a mathematical formula that takes the
- 6543 audit results from a small sample of Medicaid claims and projects those results over a much
- 6544 larger group of Medicaid claims.
- 6545 (6) "Fraud" means intentional or knowing:
- 6546 (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a
- 6547 claim, reimbursement, or services; or
- 6548 (b) a violation of a provision of Sections [~~26-20-3~~] [26B-3-1102](#) through [~~26-20-7~~]
- 6549 [26B-3-1106](#).
- 6550 (7) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's
- 6551 office.
- 6552 (8) "Health care professional" means a person licensed under:
- 6553 (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- 6554 (b) Title 58, Chapter 16a, Utah Optometry Practice Act;
- 6555 (c) Title 58, Chapter 17b, Pharmacy Practice Act;
- 6556 (d) Title 58, Chapter 24b, Physical Therapy Practice Act;
- 6557 (e) Title 58, Chapter 31b, Nurse Practice Act;
- 6558 (f) Title 58, Chapter 40, Recreational Therapy Practice Act;
- 6559 (g) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act;
- 6560 (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;
- 6561 (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 6562 (j) Title 58, Chapter 49, Dietitian Certification Act;
- 6563 (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
- 6564 (l) Title 58, Chapter 67, Utah Medical Practice Act;
- 6565 (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 6566 (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

6567 (o) Title 58, Chapter 70a, Utah Physician Assistant Act; and
6568 (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.
6569 (9) "Inspector general" means the inspector general of the office, appointed under
6570 Section [63A-13-201](#).

6571 (10) "Office" means the Office of Inspector General of Medicaid Services, created in
6572 Section [63A-13-201](#).

6573 (11) "Provider" means a person that provides:

6574 (a) medical assistance, including supplies or services, in exchange, directly or
6575 indirectly, for Medicaid funds; or

6576 (b) billing or recordkeeping services relating to Medicaid funds.

6577 (12) "Upcoding" means assigning an inaccurate billing code for a service that is
6578 payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking
6579 into account reasonable opinions derived from official published coding definitions, would
6580 result in a lower Medicaid payment or reimbursement.

6581 (13) (a) "Waste" means the act of using or expending a resource carelessly,
6582 extravagantly, or to no purpose.

6583 (b) "Waste" includes an activity that:

6584 (i) does not constitute abuse or necessarily involve a violation of law; and

6585 (ii) relates primarily to mismanagement, an inappropriate action, or inadequate
6586 oversight.

6587 Section 72. Section **63A-13-204** is amended to read:

6588 **63A-13-204. Selection and review of claims.**

6589 (1) (a) The office shall periodically select and review a representative sample of claims
6590 submitted for reimbursement under the state Medicaid program to determine whether fraud,
6591 waste, or abuse occurred.

6592 (b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36
6593 months prior to the date of the inception of the investigation or 72 months if there is a credible
6594 allegation of fraud. In the event the office or the fraud unit determines that there is fraud as
6595 defined in Section [63A-13-102](#), then the statute of limitations defined in [~~Subsection~~
6596 ~~26-20-15(1)~~] [Section 26B-3-1115](#) shall apply.

6597 (2) The office may directly contact the recipient of record for a Medicaid reimbursed

6598 service to determine whether the service for which reimbursement was claimed was actually
6599 provided to the recipient of record.

6600 (3) The office shall:

6601 (a) generate statistics from the sample described in Subsection (1) to determine the
6602 type of fraud, waste, or abuse that is most advantageous to focus on in future audits or
6603 investigations;

6604 (b) ensure that the office, or any entity that contracts with the office to conduct audits:

6605 (i) has on staff or contracts with a medical or dental professional who is experienced in
6606 the treatment, billing, and coding procedures used by the type of provider being audited; and

6607 (ii) uses the services of the appropriate professional described in Subsection (3)(b)(i) if
6608 the provider that is the subject of the audit disputes the findings of the audit;

6609 (c) ensure that a finding of overpayment or underpayment to a provider is not based on
6610 extrapolation, unless:

6611 (i) there is a determination that the level of payment error involving the provider
6612 exceeds a 10% error rate:

6613 (A) for a sample of claims for a particular service code; and

6614 (B) over a three year period of time;

6615 (ii) documented education intervention has failed to correct the level of payment error;

6616 and

6617 (iii) the value of the claims for the provider, in aggregate, exceeds \$200,000 in
6618 reimbursement for a particular service code on an annual basis; and

6619 (d) require that any entity with which the office contracts, for the purpose of
6620 conducting an audit of a service provider, shall be paid on a flat fee basis for identifying both
6621 overpayments and underpayments.

6622 (4) (a) If the office, or a contractor on behalf of the department:

6623 (i) intends to implement the use of extrapolation as a method of auditing claims, the
6624 department shall, prior to adopting the extrapolation method of auditing, report its intent to use
6625 extrapolation:

6626 (A) to the Social Services Appropriations Subcommittee; and

6627 (B) as required under Section 63A-13-502; and

6628 (ii) determines Subsections (3)(c)(i) through (iii) are applicable to a provider, the office

6629 or the contractor may use extrapolation only for the service code associated with the findings
6630 under Subsections (3)(c)(i) through (iii).

6631 (b) (i) If extrapolation is used under this section, a provider may, at the provider's
6632 option, appeal the results of the audit based on:

6633 (A) each individual claim; or

6634 (B) the extrapolation sample.

6635 (ii) Nothing in this section limits a provider's right to appeal the audit under Title 63G,
6636 Chapter 4, Administrative Procedures Act, the Medicaid program and its manual or rules, or
6637 other laws or rules that may provide remedies to providers.

6638 Section 73. Section **63A-13-301** is amended to read:

6639 **63A-13-301. Access to records -- Retention of designation under Government**
6640 **Records Access and Management Act.**

6641 (1) In order to fulfill the duties described in Section [63A-13-202](#), and in the manner
6642 provided in Subsection (4), the office shall have unrestricted access to all records of state
6643 executive branch entities, all local government entities, and all providers relating, directly or
6644 indirectly, to:

6645 (a) the state Medicaid program;

6646 (b) state or federal Medicaid funds;

6647 (c) the provision of Medicaid related services;

6648 (d) the regulation or management of any aspect of the state Medicaid program;

6649 (e) the use or expenditure of state or federal Medicaid funds;

6650 (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;

6651 (g) Medicaid program policies, practices, and procedures;

6652 (h) monitoring of Medicaid services or funds; or

6653 (i) a fatality review of a person who received Medicaid funded services.

6654 (2) The office shall have access to information in any database maintained by the state
6655 or a local government to verify identity, income, employment status, or other factors that affect
6656 eligibility for Medicaid services.

6657 (3) The records described in Subsections (1) and (2) include records held or maintained
6658 by the department, the division, the Department of [~~Human Services~~] Health and Human
6659 Services, the Department of Workforce Services, a local health department, a local mental

6660 health authority, or a school district. The records described in Subsection (1) include records
6661 held or maintained by a provider. When conducting an audit of a provider, the office shall, to
6662 the extent possible, limit the records accessed to the scope of the audit.

6663 (4) A record, described in Subsection (1) or (2), that is accessed or copied by the
6664 office:

6665 (a) may be reviewed or copied by the office during normal business hours, unless
6666 otherwise requested by the provider or health care professional under Subsection (4)(b);

6667 (b) unless there is a credible allegation of fraud, shall be accessed, reviewed, and
6668 copied in a manner, on a day, and at a time that is minimally disruptive to the health care
6669 professional's or provider's care of patients, as requested by the health care professional or
6670 provider;

6671 (c) may be submitted electronically;

6672 (d) may be submitted together with other records for multiple claims; and

6673 (e) if it is a government record, shall retain the classification made by the entity
6674 responsible for the record, under Title 63G, Chapter 2, Government Records Access and
6675 Management Act.

6676 (5) Except as provided in Subsection (7), notwithstanding any provision of state law to
6677 the contrary, the office shall have the same access to all records, information, and databases to
6678 which the department or the division has access.

6679 (6) The office shall comply with the requirements of federal law, including the Health
6680 Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to the
6681 office's:

6682 (a) access, review, retention, and use of records; and

6683 (b) use of information included in, or derived from, records.

6684 (7) The office's access to data held by the Health Data Committee:

6685 (a) is not subject to this section; and

6686 (b) is subject to [~~Title 26, Chapter 33a, Utah Health Data Authority Act~~] Title 26B,
6687 Chapter 8, Part 5, Utah Health Data Authority.

6688 Section 74. Section **63A-16-803** is amended to read:

6689 **63A-16-803. Single sign-on citizen portal -- Creation.**

6690 (1) The division shall, in consultation with the entities described in Subsection (4),

6691 design and create a single sign-on citizen portal that is:

6692 (a) a web portal through which an individual may access information and services
6693 described in Subsection (2), as agreed upon by the entities described in Subsection (4); and

6694 (b) secure, centralized, and interconnected.

6695 (2) The division shall ensure that the single sign-on citizen portal allows an individual,
6696 at a single point of entry, to:

6697 (a) access and submit an application for:

6698 (i) medical and support programs including:

6699 (A) a medical assistance program administered under [~~Title 26, Chapter 18, Medical~~
6700 ~~Assistance Act~~] Title 26B, Chapter 3, Health Care - Administration and Assistance, including
6701 Medicaid;

6702 (B) the Children's Health Insurance Program under [~~Title 26, Chapter 40, Utah~~
6703 ~~Children's Health Insurance Act~~] Title 26B, Chapter 3, Part 9, Utah Children's Health Insurance
6704 Program;

6705 (C) the Primary Care Network as defined in Section [~~26-18-416~~] 26B-3-211; and

6706 (D) the Women, Infants, and Children program administered under 42 U.S.C. Sec.
6707 1786;

6708 (ii) unemployment insurance under Title 35A, Chapter 4, Employment Security Act;

6709 (iii) workers' compensation under Title 34A, Chapter 2, Workers' Compensation Act;

6710 (iv) employment with a state agency;

6711 (v) a driver license or state identification card renewal under Title 53, Chapter 3,
6712 Uniform Driver License Act;

6713 (vi) a birth or death certificate under [~~Title 26, Chapter 2, Utah Vital Statistics Act~~]
6714 Title 26B, Chapter 8, Part 1, Vital Statistics; and

6715 (vii) a hunting or fishing license under Title 23, Chapter 19, Licenses, Permits, and
6716 Tags;

6717 (b) access the individual's:

6718 (i) transcripts from an institution of higher education described in Section 53B-2-101;

6719 and

6720 (ii) immunization records maintained by the [~~Utah~~] Department of [~~Health~~] Health and
6721 Human Services;

(c) register the individual's vehicle under Title 41, Chapter 1a, Part 2, Registration, with the Motor Vehicle Division of the State Tax Commission;

(d) file the individual's state income taxes under Title 59, Chapter 10, Individual Income Tax Act, beginning December 1, 2020;

(e) access information about positions available for employment with the state; and

(f) access any other service or information the department determines is appropriate in consultation with the entities described in Subsection (4).

(3) The division shall develop the single sign-on citizen portal using an open platform that:

(a) facilitates participation in the portal by a state entity;

(b) allows for optional participation in the portal by a political subdivision of the state;

and

(c) contains a link to the State Tax Commission website.

(4) In developing the single sign-on citizen portal, the department shall consult with:

(a) each state executive branch agency that administers a program, provides a service, or manages applicable information described in Subsection (2);

(b) the Utah League of Cities and Towns;

(c) the Utah Association of Counties; and

(d) other appropriate state executive branch agencies.

(5) The division shall ensure that the single sign-on citizen portal is fully operational no later than January 1, 2025.

Section 75. Section **63A-17-806** is amended to read:

63A-17-806. Definitions -- Infant at Work Pilot Program -- Administration -- Report.

(1) As used in this section:

(a) "Eligible employee" means an employee who has been employed by the Department of ~~[Health]~~ Health and Human Services for a minimum of:

(i) 12 consecutive months; and

(ii) 1,250 hours, excluding paid time off during the 12-month period immediately preceding the day on which the employee applies for participation in the program.

(b) "Infant" means a baby that is at least six weeks of age and no more than six months

6753 of age.

6754 (c) "Parent" means:

6755 (i) a biological or adoptive parent of an infant; or

6756 (ii) an individual who has an infant placed in the individual's foster care by the

6757 Division of Child and Family Services.

6758 (d) "Program" means the Infant at Work Pilot Program established in this section.

6759 (2) There is created the Infant at Work Pilot Program for eligible employees.

6760 (3) The program shall:

6761 (a) allow an eligible employee to bring the eligible employee's infant to work subject to
6762 the provisions of this section;

6763 (b) be administered by the division; and

6764 (c) be implemented for a minimum of one year.

6765 (4) The division shall establish an application process for eligible employees of the
6766 Department of ~~[Health]~~ Health and Human Services to apply to the program that includes:

6767 (a) a process for evaluating whether an eligible employee's work environment is
6768 appropriate for an infant;

6769 (b) guidelines for infant health and safety; and

6770 (c) guidelines regarding an eligible employee's initial and ongoing participation in the
6771 program.

6772 (5) If the division approves the eligible employee for participation in the program, the
6773 eligible employee shall have the sole responsibility for the care and safety of the infant at the
6774 workplace.

6775 (6) The division may not require the Department of ~~[Health]~~ Health and Human
6776 Services to designate or set aside space for an eligible employee's infant other than the eligible
6777 employee's existing work space.

6778 (7) The division, in consultation with the Department of ~~[Health]~~ Health and Human
6779 Services, shall make rules that the department determines necessary to establish the program in
6780 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6781 (8) On or before June 30, 2022, the division, in consultation with the Department of
6782 ~~[Health]~~ Health and Human Services, shall submit a written report to the Business and Labor
6783 Interim Committee that describes the efficacy of the program, including any recommendations

6784 for additional legislative action.

6785 Section 76. Section **63A-17-1001** is amended to read:

6786 **63A-17-1001. Controlled substances and alcohol use prohibited.**

6787 Except as provided in [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B,
6788 Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, an employee may not:

6789 (1) manufacture, dispense, possess, use, distribute, or be under the influence of a
6790 controlled substance or alcohol during work hours or on state property except where legally
6791 permissible;

6792 (2) manufacture, dispense, possess, use, or distribute a controlled substance or alcohol
6793 if the activity prevents:

6794 (a) state agencies from receiving federal grants or performing under federal contracts of
6795 \$25,000 or more; or

6796 (b) the employee to perform his services or work for state government effectively as
6797 regulated by the rules of the executive director in accordance with Section **63A-17-1002**; or

6798 (3) refuse to submit to a drug or alcohol test under Section **63A-17-1004**.

6799 Section 77. Section **63B-16-401** is amended to read:

6800 **63B-16-401. Authorizations to acquire, sell, lease, or exchange property.**

6801 (1) It is the intent of the Legislature that:

6802 (a) the Southeast Applied Technology Campus of the Utah College of Applied
6803 Technology and Utah State University Eastern may cooperatively enter into negotiations with a
6804 nonstate entity and complete a real property exchange to acquire an applied technology facility
6805 in Price;

6806 (b) no state funds be used for any portion of this project; and

6807 (c) the college may request state funds for operations and maintenance costs and capital
6808 improvements to the extent that the college is able to demonstrate to the Board of Regents that
6809 the facility meets approved academic and training purposes under Board of Regents policy
6810 R710.

6811 (2) It is the intent of the Legislature that:

6812 (a) the Mountainland Applied Technology Campus of the Utah College of Applied
6813 Technology may exercise its option to purchase additional property in northern Utah County
6814 adjacent to property purchased with the appropriation in Chapter 367, Item 41, Laws of Utah

6815 2006;

6816 (b) the purchase be financed through donations, institutional funds, a land exchange
6817 involving Lehi City and the Utah Transit Authority, or some combination of donations,
6818 institutional funds, and a land exchange involving Lehi City and the Utah Transit Authority for
6819 future development of a commuter rail station;

6820 (c) the purchase be conducted under the direction of the director of the Division of
6821 Facilities Construction and Management; and

6822 (d) no state funds be used for any portion of this purchase.

6823 (3) It is the intent of the Legislature that:

6824 (a) the Department of Human Services Complex located at 120 North 200 West, Salt
6825 Lake City, Utah be sold for \$11,000,000;

6826 (b) that the proceeds from the sale be used to:

6827 (i) payoff the outstanding bond on the Human Services Complex;

6828 (ii) purchase the Brigham Young University Salt Lake Center located at 3760 South
6829 Highland Drive, Salt Lake City, Utah for up to \$6,000,000 for occupancy by the Utah State
6830 Board of Education Schools for the Deaf and Blind; and

6831 (iii) the remaining funds be used to remodel the Salt Lake Center; and

6832 (c) the Division of Facilities, Construction and Management enter into a lease with the
6833 buyer of the Human Services Complex for and on behalf of the Department of Health and
6834 Human Services that allows the Department of Health and Human Services to continue to
6835 occupy the complex for the period of time needed for the state to purchase, construct, or lease a
6836 replacement facility for the Department of Health and Human Services.

6837 Section 78. Section **63C-9-403** is amended to read:

6838 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

6839 (1) As used in this section:

6840 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
6841 related to a single project.

6842 (b) "Change order" means the same as that term is defined in Section **63G-6a-103**.

6843 (c) "Employee" means, as defined in Section **34A-2-104**, an "employee," "worker," or
6844 "operative" who:

6845 (i) works at least 30 hours per calendar week; and

6846 (ii) meets employer eligibility waiting requirements for health care insurance, which
6847 may not exceed the first of the calendar month following 60 days after the day on which the
6848 individual is hired.

6849 (d) "Health benefit plan" means:

6850 (i) the same as that term is defined in Section [31A-1-301](#); or

6851 (ii) an employee welfare benefit plan:

6852 (A) established under the Employee Retirement Income Security Act of 1974, 29
6853 U.S.C. Sec. 1001 et seq.;

6854 (B) for an employer with 100 or more employees; and

6855 (C) in which the employer establishes a self-funded or partially self-funded group
6856 health plan to provide medical care for the employer's employees and dependents of the
6857 employees.

6858 (e) "Qualified health coverage" means the same as that term is defined in Section
6859 [\[26-40-115\] 26B-3-909](#).

6860 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).

6861 (g) "Third party administrator" or "administrator" means the same as that term is
6862 defined in Section [31A-1-301](#).

6863 (2) Except as provided in Subsection (3), the requirements of this section apply to:

6864 (a) a contractor of a design or construction contract entered into by the board, or on
6865 behalf of the board, on or after July 1, 2009, if the prime contract is in an aggregate amount
6866 equal to or greater than \$2,000,000; and

6867 (b) a subcontractor of a contractor of a design or construction contract entered into by
6868 the board, or on behalf of the board, on or after July 1, 2009, if the subcontract is in an
6869 aggregate amount equal to or greater than \$1,000,000.

6870 (3) The requirements of this section do not apply to a contractor or subcontractor
6871 described in Subsection (2) if:

6872 (a) the application of this section jeopardizes the receipt of federal funds;

6873 (b) the contract is a sole source contract; or

6874 (c) the contract is an emergency procurement.

6875 (4) A person that intentionally uses change orders, contract modifications, or multiple
6876 contracts to circumvent the requirements of this section is guilty of an infraction.

6877 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
6878 executive director that the contractor has and will maintain an offer of qualified health
6879 coverage for the contractor's employees and the employees' dependents during the duration of
6880 the contract by submitting to the executive director a written statement that:

6881 (i) the contractor offers qualified health coverage that complies with Section
6882 ~~[26-40-115]~~ [26B-3-909](#);

6883 (ii) is from:

6884 (A) an actuary selected by the contractor or the contractor's insurer;

6885 (B) an underwriter who is responsible for developing the employer group's premium
6886 rates; or

6887 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
6888 an actuary or underwriter selected by a third party administrator; and

6889 (iii) was created within one year before the day on which the statement is submitted.

6890 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
6891 shall provide the actuary or underwriter selected by the administrator, as described in
6892 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
6893 contribution to the health benefit plan and the health benefit plan's actuarial value meets the
6894 requirements of qualified health coverage.

6895 (ii) A contractor may not make a change to the contractor's contribution to the health
6896 benefit plan, unless the contractor provides notice to:

6897 (A) the actuary or underwriter selected by the administrator, as described in Subsection
6898 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
6899 Subsection (5)(a) in compliance with this section; and

6900 (B) the executive director.

6901 (c) A contractor that is subject to the requirements of this section shall:

6902 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
6903 is subject to the requirements of this section shall obtain and maintain an offer of qualified
6904 health coverage for the subcontractor's employees and the employees' dependents during the
6905 duration of the subcontract; and

6906 (ii) obtain from a subcontractor that is subject to the requirements of this section a
6907 written statement that:

6908 (A) the subcontractor offers qualified health coverage that complies with Section
6909 ~~[26-40-115]~~ [26B-3-909](#);

6910 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
6911 underwriter who is responsible for developing the employer group's premium rates, or if the
6912 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
6913 underwriter selected by an administrator; and

6914 (C) was created within one year before the day on which the contractor obtains the
6915 statement.

6916 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage as
6917 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
6918 accordance with administrative rules adopted by the division under Subsection (6).

6919 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
6920 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

6921 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
6922 coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to
6923 penalties in accordance with administrative rules adopted by the department under Subsection
6924 (6).

6925 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
6926 an offer of qualified health coverage described in Subsection (5)(a).

6927 (6) The department shall adopt administrative rules:

6928 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

6929 (b) in coordination with:

6930 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

6931 (ii) the Department of Natural Resources in accordance with Section [79-2-404](#);

6932 (iii) the Division of Facilities Construction and Management in accordance with
6933 Section [63A-5b-607](#);

6934 (iv) a public transit district in accordance with Section [17B-2a-818.5](#);

6935 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and

6936 (vi) the Legislature's Administrative Rules Review and General Oversight Committee;
6937 and

6938 (c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section [63G-6a-904](#) upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by the Department of ~~[Health]~~ Health and Human Services, in accordance with Subsection ~~[26-40-115(2)]~~ [26B-3-909\(2\)](#).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the employee for health care costs that would have been covered by qualified health coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or

6970 (B) the department determines that compliance with this section is not required under
6971 the provisions of Subsection (3).

6972 (b) An employee has a private right of action only against the employee's employer to
6973 enforce the provisions of this Subsection (7).

6974 (8) Any penalties imposed and collected under this section shall be deposited into the
6975 Medicaid Restricted Account created in Section ~~[26-18-402]~~ 26B-1-309.

6976 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
6977 required by this section:

6978 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
6979 or contractor under:

6980 (i) Section 63G-6a-1602; or

6981 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

6982 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
6983 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
6984 or construction.

6985 (10) An administrator, including the administrator's actuary or underwriter, who
6986 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
6987 coverage of a contractor or subcontractor who provides a health benefit plan described in
6988 Subsection (1)(d)(ii):

6989 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
6990 unless the administrator commits gross negligence in preparing the written statement;

6991 (b) is not liable for any error in the written statement if the administrator relied in good
6992 faith on information from the contractor or subcontractor; and

6993 (c) may require as a condition of providing the written statement that a contractor or
6994 subcontractor hold the administrator harmless for an action arising under this section.

6995 Section 79. Section **63C-18-102** is amended to read:

6996 **63C-18-102. Definitions.**

6997 As used in this chapter:

6998 (1) "Commission" means the Behavioral Health Crisis Response Commission created
6999 in Section 63C-18-202.

7000 (2) "Local mental health crisis line" means the same as that term is defined in Section

7001 [~~62A-15-1301~~] [26B-5-610](#).

7002 (3) "Statewide mental health crisis line" means the same as that term is defined in

7003 Section [~~62A-15-1301~~] [26B-5-610](#).

7004 (4) "Statewide warm line" means the same as that term is defined in Section

7005 [~~62A-15-1301~~] [26B-5-610](#).

7006 Section 80. Section **63C-18-202** is amended to read:

7007 **63C-18-202. Commission established -- Members.**

7008 (1) There is created the Behavioral Health Crisis Response Commission, composed of
7009 the following members:

7010 (a) the executive director of the University Neuropsychiatric Institute;

7011 (b) the governor or the governor's designee;

7012 (c) the director of the [~~Division of Substance Abuse~~] Office of Substance Use and
7013 Mental Health;

7014 (d) one representative of the Office of the Attorney General, appointed by the attorney
7015 general;

7016 (e) one member of the public, appointed by the chair of the commission and approved
7017 by the commission;

7018 (f) two individuals who are mental or behavioral health clinicians licensed to practice
7019 in the state, appointed by the chair of the commission and approved by the commission, at least
7020 one of whom is an individual who:

7021 (i) is licensed as a physician under:

7022 (A) Title 58, Chapter 67, Utah Medical Practice Act;

7023 (B) Title 58, Chapter 67b, Interstate Medical Licensure Compact; or

7024 (C) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

7025 (ii) is board eligible for a psychiatry specialization recognized by the American Board
7026 of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic
7027 Specialists;

7028 (g) one individual who represents a county of the first or second class, appointed by the
7029 Utah Association of Counties;

7030 (h) one individual who represents a county of the third, fourth, or fifth class, appointed
7031 by the Utah Association of Counties;

7032 (i) one individual who represents the Utah Hospital Association, appointed by the chair
7033 of the commission;

7034 (j) one individual who represents law enforcement, appointed by the chair of the
7035 commission;

7036 (k) one individual who has lived with a mental health disorder, appointed by the chair
7037 of the commission;

7038 (l) one individual who represents an integrated health care system that:

7039 (i) is not affiliated with the chair of the commission; and

7040 (ii) provides inpatient behavioral health services and emergency room services to
7041 individuals in the state;

7042 (m) one individual who represents an accountable care organization, as defined in
7043 Section ~~[26-18-423]~~ [26B-3-219](#), with a statewide membership base;

7044 (n) three members of the House of Representatives, appointed by the speaker of the
7045 House of Representatives, no more than two of whom may be from the same political party;

7046 (o) three members of the Senate, appointed by the president of the Senate, no more
7047 than two of whom may be from the same political party;

7048 (p) one individual who represents 911 call centers and public safety answering points,
7049 appointed by the chair of the commission;

7050 (q) one individual who represents Emergency Medical Services, appointed by the chair
7051 of the commission;

7052 (r) one individual who represents the mobile wireless service provider industry,
7053 appointed by the chair of the commission;

7054 (s) one individual who represents rural telecommunications providers, appointed by the
7055 chair of the commission;

7056 (t) one individual who represents voice over internet protocol and land line providers,
7057 appointed by the chair of the commission; and

7058 (u) one individual who represents the Utah League of Cities and Towns, appointed by
7059 the chair of the commission.

7060 (2) On December 31, 2022:

7061 (a) the number of members described in Subsection (1)(n) and the number of members
7062 described in Subsection (1)(o) is reduced to one, with no restriction relating to party

7063 membership; and

7064 (b) the members described in Subsections (1)(p) through (u) are removed from the
7065 commission.

7066 (3) (a) The executive director of the University Neuropsychiatric Institute is the chair
7067 of the commission.

7068 (b) The chair of the commission shall appoint a member of the commission to serve as
7069 the vice chair of the commission, with the approval of the commission.

7070 (c) The chair of the commission shall set the agenda for each commission meeting.

7071 (4) (a) A majority of the members of the commission constitutes a quorum.

7072 (b) The action of a majority of a quorum constitutes the action of the commission.

7073 (5) (a) Except as provided in Subsection (5)(b), a member may not receive
7074 compensation, benefits, per diem, or travel expenses for the member's service on the
7075 commission.

7076 (b) Compensation and expenses of a member who is a legislator are governed by
7077 Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

7078 (6) The Office of the Attorney General shall provide staff support to the commission.
7079 Section 81. Section 63C-18-203 is amended to read:

7080 **63C-18-203. Commission duties -- Reporting requirements.**

7081 (1) The commission shall:

7082 (a) identify a method to integrate existing local mental health crisis lines to ensure each
7083 individual who accesses a local mental health crisis line is connected to a qualified mental or
7084 behavioral health professional, regardless of the time, date, or number of individuals trying to
7085 simultaneously access the local mental health crisis line;

7086 (b) study how to establish and implement a statewide mental health crisis line and a
7087 statewide warm line, including identifying:

7088 (i) a statewide phone number or other means for an individual to easily access the
7089 statewide mental health crisis line, including a short code for text messaging and a three-digit
7090 number for calls;

7091 (ii) a statewide phone number or other means for an individual to easily access the
7092 statewide warm line, including a short code for text messaging and a three-digit number for
7093 calls;

7094 (iii) a supply of:
7095 (A) qualified mental or behavioral health professionals to staff the statewide mental
7096 health crisis line; and
7097 (B) qualified mental or behavioral health professionals or certified peer support
7098 specialists to staff the statewide warm line; and
7099 (iv) a funding mechanism to operate and maintain the statewide mental health crisis
7100 line and the statewide warm line;
7101 (c) coordinate with local mental health authorities in fulfilling the commission's duties
7102 described in Subsections (1)(a) and (b); and
7103 (d) recommend standards for the certifications described in Section [~~62A-15-1302~~]
7104 [26B-5-610](#).
7105 (2) In preparation for the implementation of the statewide 988 hotline, the commission
7106 shall study and make recommendations regarding:
7107 (a) crisis line practices and needs, including:
7108 (i) quality and timeliness of service;
7109 (ii) service volume projections;
7110 (iii) a statewide assessment of crisis line staffing needs, including required
7111 certifications; and
7112 (iv) a statewide assessment of technology needs;
7113 (b) primary duties performed by crisis line workers;
7114 (c) coordination or redistribution of secondary duties performed by crisis line workers,
7115 including responding to non-emergency calls;
7116 (d) establishing a statewide 988 hotline:
7117 (i) in accordance with federal law;
7118 (ii) that ensures the efficient and effective routing of calls to an appropriate crisis
7119 center; and
7120 (iii) that includes directly responding to calls with trained personnel and the provision
7121 of acute mental health, crisis outreach, and stabilization services;
7122 (e) opportunities to increase operational and technological efficiencies and
7123 effectiveness between 988 and 911, utilizing current technology;
7124 (f) needs for interoperability partnerships and policies related to 911 call transfers and

7125 public safety responses;

7126 (g) standards for statewide mobile crisis outreach teams, including:

7127 (i) current models and projected needs;

7128 (ii) quality and timeliness of service;

7129 (iii) hospital and jail diversions; and

7130 (iv) staffing and certification;

7131 (h) resource centers, including:

7132 (i) current models and projected needs; and

7133 (ii) quality and timeliness of service;

7134 (i) policy considerations related to whether the state should:

7135 (i) manage, operate, and pay for a complete behavioral health system; or

7136 (ii) create partnerships with private industry; and

7137 (j) sustainable funding source alternatives, including:

7138 (i) charging a 988 fee, including a recommendation on the fee amount;

7139 (ii) General Fund appropriations;

7140 (iii) other government funding options;

7141 (iv) private funding sources;

7142 (v) grants;

7143 (vi) insurance partnerships, including coverage for support and treatment after initial

7144 call and triage; and

7145 (vii) other funding resources.

7146 (3) The commission shall:

7147 (a) before December 31, 2021, present an initial report on the matters described in

7148 Subsection (2), including any proposed legislation, to the Executive Appropriations

7149 Committee; and

7150 (b) before December 31, 2022, present a final report on the items described in

7151 Subsection (2), including any proposed legislation, to the Executive Appropriations

7152 Committee.

7153 (4) The duties described in Subsection (2) are removed on December 31, 2022.

7154 (5) The commission may conduct other business related to the commission's duties

7155 described in this section.

(6) The commission shall consult with the ~~[Division of Substance Abuse]~~ Office of Substance Use and Mental Health regarding the standards and operation of the statewide mental health crisis line and the statewide warm line, in accordance with ~~[Title 62A, Chapter 15, Part 13, Statewide Mental Health Crisis Line and Statewide Warm Line]~~ Section 26B-5-610.

Section 82. Section **63G-2-202** is amended to read:

63G-2-202. Access to private, controlled, and protected documents.

(1) Except as provided in Subsection (11)(a), a governmental entity:

(a) shall, upon request, disclose a private record to:

(i) the subject of the record;

(ii) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(iii) the legal guardian of a legally incapacitated individual who is the subject of the record;

(iv) any other individual who:

(A) has a power of attorney from the subject of the record;

(B) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or

(C) if the record is a medical record described in Subsection **63G-2-302**(1)(b), is a health care provider, as defined in Section ~~[26-33a-102]~~ 26B-8-501, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(v) any person to whom the record must be provided pursuant to:

(A) court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; and

(b) may disclose a private record described in Subsections **63G-2-302**(1)(j) through (m), without complying with Section **63G-2-206**, to another governmental entity for a purpose related to:

(i) voter registration; or

(ii) the administration of an election.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, physician assistant, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

(A) a court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (11)(b), a governmental entity shall disclose a protected record to:

(a) the person that submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) Except as provided in Subsection (1)(b), a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that:

(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

(iii) (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

7249 (B) requires the removal or destruction of the individual identifiers associated with the
7250 records as soon as the purpose of the research project has been accomplished;

7251 (iv) prohibits the researcher from:

7252 (A) disclosing the record in individually identifiable form, except as provided in
7253 Subsection (8)(b); or

7254 (B) using the record for purposes other than the research approved by the governmental
7255 entity; and

7256 (v) secures from the researcher a written statement of the researcher's understanding of
7257 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
7258 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
7259 under Section 63G-2-801.

7260 (b) A researcher may disclose a record in individually identifiable form if the record is
7261 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
7262 or disclosure of the record in individually identifiable form will be made by the auditor or
7263 evaluator except as provided by this section.

7264 (c) A governmental entity may require indemnification as a condition of permitting
7265 research under this Subsection (8).

7266 (d) A governmental entity may not disclose or authorize disclosure of a private record
7267 for research purposes as described in this Subsection (8) if the private record is a record
7268 described in Subsection 63G-2-302(1)(w).

7269 (9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity
7270 may disclose to persons other than those specified in this section records that are:

7271 (i) private under Section 63G-2-302; or

7272 (ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for
7273 business confidentiality has been made under Section 63G-2-309.

7274 (b) Under Subsection 63G-2-403(11)(b), the State Records Committee may require the
7275 disclosure to persons other than those specified in this section of records that are:

7276 (i) private under Section 63G-2-302;

7277 (ii) controlled under Section 63G-2-304; or

7278 (iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for
7279 business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection [63G-2-404](#)(7), the court may require the disclosure of records that are private under Section [63G-2-302](#), controlled under Section [63G-2-304](#), or protected under Section [63G-2-305](#) to persons other than those specified in this section.

(10) (a) A private record described in Subsection [63G-2-302](#)(2)(f) may only be disclosed as provided in Subsection (1)(a)(v).

(b) A protected record described in Subsection [63G-2-305](#)(43) may only be disclosed as provided in Subsection (4)(c) or Section [\[62A-3-312\]](#) [26B-6-212](#).

(11) (a) A private, protected, or controlled record described in Section [\[62A-16-301\]](#) [26B-1-506](#) shall be disclosed as required under:

(i) Subsections [\[62A-16-301\(1\)\(b\), \(2\), and \(4\)\(c\)\]](#) [26B-1-506](#)(1)(b), (2), and (4)(c); and

(ii) Subsections [\[62A-16-302\(1\) and \(6\)\]](#) [26B-1-507](#)(1) and (6).

(b) A record disclosed under Subsection (11)(a) shall retain its character as private, protected, or controlled.

Section 83. Section **63G-2-302** is amended to read:

63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review

7311 of Executive Branch Ethics Complaints;

7312 (f) records received or generated for a Senate confirmation committee concerning
7313 character, professional competence, or physical or mental health of an individual:

7314 (i) if, prior to the meeting, the chair of the committee determines release of the records:

7315 (A) reasonably could be expected to interfere with the investigation undertaken by the
7316 committee; or

7317 (B) would create a danger of depriving a person of a right to a fair proceeding or
7318 impartial hearing; and

7319 (ii) after the meeting, if the meeting was closed to the public;

7320 (g) employment records concerning a current or former employee of, or applicant for
7321 employment with, a governmental entity that would disclose that individual's home address,
7322 home telephone number, social security number, insurance coverage, marital status, or payroll
7323 deductions;

7324 (h) records or parts of records under Section 63G-2-303 that a current or former
7325 employee identifies as private according to the requirements of that section;

7326 (i) that part of a record indicating a person's social security number or federal employer
7327 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,
7328 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

7329 (j) that part of a voter registration record identifying a voter's:

7330 (i) driver license or identification card number;

7331 (ii) social security number, or last four digits of the social security number;

7332 (iii) email address;

7333 (iv) date of birth; or

7334 (v) phone number;

7335 (k) a voter registration record that is classified as a private record by the lieutenant
7336 governor or a county clerk under Subsection 20A-2-101.1(5)(a), 20A-2-104(4)(h), or
7337 20A-2-204(4)(b);

7338 (l) a voter registration record that is withheld under Subsection 20A-2-104(7);

7339 (m) a withholding request form described in Subsections 20A-2-104(7) and (8) and any
7340 verification submitted in support of the form;

7341 (n) a record that:

7342 (i) contains information about an individual;
7343 (ii) is voluntarily provided by the individual; and
7344 (iii) goes into an electronic database that:
7345 (A) is designated by and administered under the authority of the Chief Information
7346 Officer; and
7347 (B) acts as a repository of information about the individual that can be electronically
7348 retrieved and used to facilitate the individual's online interaction with a state agency;
7349 (o) information provided to the Commissioner of Insurance under:
7350 (i) Subsection 31A-23a-115(3)(a);
7351 (ii) Subsection 31A-23a-302(4); or
7352 (iii) Subsection 31A-26-210(4);
7353 (p) information obtained through a criminal background check under Title 11, Chapter
7354 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
7355 (q) information provided by an offender that is:
7356 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
7357 Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and
7358 (ii) not required to be made available to the public under Subsection 77-41-110(4) or
7359 77-43-108(4);
7360 (r) a statement and any supporting documentation filed with the attorney general in
7361 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
7362 homeland security;
7363 (s) electronic toll collection customer account information received or collected under
7364 Section 72-6-118 and customer information described in Section 17B-2a-815 received or
7365 collected by a public transit district, including contact and payment information and customer
7366 travel data;
7367 (t) an email address provided by a military or overseas voter under Section
7368 20A-16-501;
7369 (u) a completed military-overseas ballot that is electronically transmitted under Title
7370 20A, Chapter 16, Uniform Military and Overseas Voters Act;
7371 (v) records received by or generated by or for the Political Subdivisions Ethics Review
7372 Commission established in Section 63A-15-201, except for:

- 7373 (i) the commission's summary data report that is required in Section 63A-15-202; and
7374 (ii) any other document that is classified as public in accordance with Title 63A,
7375 Chapter 15, Political Subdivisions Ethics Review Commission;
- 7376 (w) a record described in Section 53G-9-604 that verifies that a parent was notified of
7377 an incident or threat;
- 7378 (x) a criminal background check or credit history report conducted in accordance with
7379 Section 63A-3-201;
- 7380 (y) a record described in Subsection 53-5a-104(7);
- 7381 (z) on a record maintained by a county for the purpose of administering property taxes,
7382 an individual's:
- 7383 (i) email address;
- 7384 (ii) phone number; or
- 7385 (iii) personal financial information related to a person's payment method;
- 7386 (aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an
7387 exemption, deferral, abatement, or relief under:
- 7388 (i) Title 59, Chapter 2, Part 11, Exemptions, Deferrals, and Abatements;
- 7389 (ii) Title 59, Chapter 2, Part 12, Property Tax Relief;
- 7390 (iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or
- 7391 (iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;
- 7392 (bb) a record provided by the State Tax Commission in response to a request under
7393 Subsection 59-1-403(4)(y)(iii);
- 7394 (cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual
7395 child welfare case, as described in Subsection 36-33-103(3); and
- 7396 (dd) a record relating to drug or alcohol testing of a state employee under Section
7397 63A-17-1004.
- 7398 (2) The following records are private if properly classified by a governmental entity:
- 7399 (a) records concerning a current or former employee of, or applicant for employment
7400 with a governmental entity, including performance evaluations and personal status information
7401 such as race, religion, or disabilities, but not including records that are public under Subsection
7402 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);
- 7403 (b) records describing an individual's finances, except that the following are public:

7404 (i) records described in Subsection [63G-2-301](#)(2);
7405 (ii) information provided to the governmental entity for the purpose of complying with
7406 a financial assurance requirement; or
7407 (iii) records that must be disclosed in accordance with another statute;
7408 (c) records of independent state agencies if the disclosure of those records would
7409 conflict with the fiduciary obligations of the agency;
7410 (d) other records containing data on individuals the disclosure of which constitutes a
7411 clearly unwarranted invasion of personal privacy;
7412 (e) records provided by the United States or by a government entity outside the state
7413 that are given with the requirement that the records be managed as private records, if the
7414 providing entity states in writing that the record would not be subject to public disclosure if
7415 retained by it;
7416 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
7417 created in Section [~~62A-3-102~~] [26B-6-102](#), that may disclose, or lead to the discovery of, the
7418 identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable
7419 adult; and
7420 (g) audio and video recordings created by a body-worn camera, as defined in Section
7421 [77-7a-103](#), that record sound or images inside a home or residence except for recordings that:
7422 (i) depict the commission of an alleged crime;
7423 (ii) record any encounter between a law enforcement officer and a person that results in
7424 death or bodily injury, or includes an instance when an officer fires a weapon;
7425 (iii) record any encounter that is the subject of a complaint or a legal proceeding
7426 against a law enforcement officer or law enforcement agency;
7427 (iv) contain an officer involved critical incident as defined in Subsection
7428 [76-2-408](#)(1)(f); or
7429 (v) have been requested for reclassification as a public record by a subject or
7430 authorized agent of a subject featured in the recording.
7431 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
7432 records, statements, history, diagnosis, condition, treatment, and evaluation.
7433 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
7434 doctors, or affiliated entities are not private records or controlled records under Section

7435 63G-2-304 when the records are sought:

7436 (i) in connection with any legal or administrative proceeding in which the patient's
7437 physical, mental, or emotional condition is an element of any claim or defense; or

7438 (ii) after a patient's death, in any legal or administrative proceeding in which any party
7439 relies upon the condition as an element of the claim or defense.

7440 (c) Medical records are subject to production in a legal or administrative proceeding
7441 according to state or federal statutes or rules of procedure and evidence as if the medical
7442 records were in the possession of a nongovernmental medical care provider.

7443 Section 84. Section 63G-2-305 is amended to read:

7444 **63G-2-305. Protected records.**

7445 The following records are protected if properly classified by a governmental entity:

7446 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
7447 has provided the governmental entity with the information specified in Section 63G-2-309;

7448 (2) commercial information or nonindividual financial information obtained from a
7449 person if:

7450 (a) disclosure of the information could reasonably be expected to result in unfair
7451 competitive injury to the person submitting the information or would impair the ability of the
7452 governmental entity to obtain necessary information in the future;

7453 (b) the person submitting the information has a greater interest in prohibiting access
7454 than the public in obtaining access; and

7455 (c) the person submitting the information has provided the governmental entity with
7456 the information specified in Section 63G-2-309;

7457 (3) commercial or financial information acquired or prepared by a governmental entity
7458 to the extent that disclosure would lead to financial speculations in currencies, securities, or
7459 commodities that will interfere with a planned transaction by the governmental entity or cause
7460 substantial financial injury to the governmental entity or state economy;

7461 (4) records, the disclosure of which could cause commercial injury to, or confer a
7462 competitive advantage upon a potential or actual competitor of, a commercial project entity as
7463 defined in Subsection 11-13-103(4);

7464 (5) test questions and answers to be used in future license, certification, registration,
7465 employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

(i) an invitation for bids;

(ii) a request for proposals;

(iii) a request for quotes;

(iv) a grant; or

(v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would

7528 interfere with enforcement or audit efforts;

7529 (11) records the disclosure of which would jeopardize the life or safety of an
7530 individual;

7531 (12) records the disclosure of which would jeopardize the security of governmental
7532 property, governmental programs, or governmental recordkeeping systems from damage, theft,
7533 or other appropriation or use contrary to law or public policy;

7534 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
7535 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
7536 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

7537 (14) records that, if disclosed, would reveal recommendations made to the Board of
7538 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
7539 Board of Pardons and Parole, or the Department of [~~Human Services~~] Health and Human
7540 Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of
7541 any person within the board's jurisdiction;

7542 (15) records and audit workpapers that identify audit, collection, and operational
7543 procedures and methods used by the State Tax Commission, if disclosure would interfere with
7544 audits or collections;

7545 (16) records of a governmental audit agency relating to an ongoing or planned audit
7546 until the final audit is released;

7547 (17) records that are subject to the attorney client privilege;

7548 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
7549 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
7550 quasi-judicial, or administrative proceeding;

7551 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
7552 from a member of the Legislature; and

7553 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
7554 legislative action or policy may not be classified as protected under this section; and

7555 (b) (i) an internal communication that is part of the deliberative process in connection
7556 with the preparation of legislation between:

7557 (A) members of a legislative body;

7558 (B) a member of a legislative body and a member of the legislative body's staff; or

7559 (C) members of a legislative body's staff; and
7560 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
7561 legislative action or policy may not be classified as protected under this section;

7562 (20) (a) records in the custody or control of the Office of Legislative Research and
7563 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
7564 legislation or contemplated course of action before the legislator has elected to support the
7565 legislation or course of action, or made the legislation or course of action public; and
7566 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
7567 Office of Legislative Research and General Counsel is a public document unless a legislator
7568 asks that the records requesting the legislation be maintained as protected records until such
7569 time as the legislator elects to make the legislation or course of action public;

7570 (21) research requests from legislators to the Office of Legislative Research and
7571 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
7572 in response to these requests;

7573 (22) drafts, unless otherwise classified as public;

7574 (23) records concerning a governmental entity's strategy about:

7575 (a) collective bargaining; or
7576 (b) imminent or pending litigation;

7577 (24) records of investigations of loss occurrences and analyses of loss occurrences that
7578 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
7579 Uninsured Employers' Fund, or similar divisions in other governmental entities;

7580 (25) records, other than personnel evaluations, that contain a personal recommendation
7581 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
7582 personal privacy, or disclosure is not in the public interest;

7583 (26) records that reveal the location of historic, prehistoric, paleontological, or
7584 biological resources that if known would jeopardize the security of those resources or of
7585 valuable historic, scientific, educational, or cultural information;

7586 (27) records of independent state agencies if the disclosure of the records would
7587 conflict with the fiduciary obligations of the agency;

7588 (28) records of an institution within the state system of higher education defined in
7589 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,

retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section [52-4-206](#);

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public

7652 information required pursuant to Subsection [53B-16-302](#)(2)(a) or (b); and
7653 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
7654 (41) (a) records in the custody or control of the Office of the Legislative Auditor
7655 General that would reveal the name of a particular legislator who requests a legislative audit
7656 prior to the date that audit is completed and made public; and
7657 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
7658 Office of the Legislative Auditor General is a public document unless the legislator asks that
7659 the records in the custody or control of the Office of the Legislative Auditor General that would
7660 reveal the name of a particular legislator who requests a legislative audit be maintained as
7661 protected records until the audit is completed and made public;
7662 (42) records that provide detail as to the location of an explosive, including a map or
7663 other document that indicates the location of:
7664 (a) a production facility; or
7665 (b) a magazine;
7666 (43) information contained in the statewide database of the Division of Aging and
7667 Adult Services created by Section [~~62A-3-311.1~~] [26B-6-210](#);
7668 (44) information contained in the Licensing Information System described in Title 80,
7669 Chapter 2, Child Welfare Services;
7670 (45) information regarding National Guard operations or activities in support of the
7671 National Guard's federal mission;
7672 (46) records provided by any pawn or secondhand business to a law enforcement
7673 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop,
7674 Secondhand Merchandise, and Catalytic Converter Transaction Information Act;
7675 (47) information regarding food security, risk, and vulnerability assessments performed
7676 by the Department of Agriculture and Food;
7677 (48) except to the extent that the record is exempt from this chapter pursuant to Section
7678 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
7679 prepared or maintained by the Division of Emergency Management, and the disclosure of
7680 which would jeopardize:
7681 (a) the safety of the general public; or
7682 (b) the security of:

7683 (i) governmental property;
7684 (ii) governmental programs; or
7685 (iii) the property of a private person who provides the Division of Emergency
7686 Management information;
7687 (49) records of the Department of Agriculture and Food that provides for the
7688 identification, tracing, or control of livestock diseases, including any program established under
7689 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
7690 of Animal Disease;
7691 (50) as provided in Section ~~[26-39-501]~~ 26B-2-408:
7692 (a) information or records held by the Department of ~~[Health]~~ Health and Human
7693 Services related to a complaint regarding a child care program or residential child care which
7694 the department is unable to substantiate; and
7695 (b) information or records related to a complaint received by the Department of
7696 ~~[Health]~~ Health and Human Services from an anonymous complainant regarding a child care
7697 program or residential child care;
7698 (51) unless otherwise classified as public under Section 63G-2-301 and except as
7699 provided under Section 41-1a-116, an individual's home address, home telephone number, or
7700 personal mobile phone number, if:
7701 (a) the individual is required to provide the information in order to comply with a law,
7702 ordinance, rule, or order of a government entity; and
7703 (b) the subject of the record has a reasonable expectation that this information will be
7704 kept confidential due to:
7705 (i) the nature of the law, ordinance, rule, or order; and
7706 (ii) the individual complying with the law, ordinance, rule, or order;
7707 (52) the portion of the following documents that contains a candidate's residential or
7708 mailing address, if the candidate provides to the filing officer another address or phone number
7709 where the candidate may be contacted:
7710 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
7711 described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408,
7712 20A-9-408.5, 20A-9-502, or 20A-9-601;
7713 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or

7714 (c) a notice of intent to gather signatures for candidacy, described in Section
7715 20A-9-408;

7716 (53) the name, home address, work addresses, and telephone numbers of an individual
7717 that is engaged in, or that provides goods or services for, medical or scientific research that is:
7718 (a) conducted within the state system of higher education, as defined in Section
7719 53B-1-102; and

7720 (b) conducted using animals;

7721 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
7722 Evaluation Commission concerning an individual commissioner's vote, in relation to whether a
7723 judge meets or exceeds minimum performance standards under Subsection 78A-12-203(4), and
7724 information disclosed under Subsection 78A-12-203(5)(e);

7725 (55) information collected and a report prepared by the Judicial Performance
7726 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
7727 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
7728 the information or report;

7729 (56) records provided or received by the Public Lands Policy Coordinating Office in
7730 furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

7731 (57) information requested by and provided to the 911 Division under Section
7732 63H-7a-302;

7733 (58) in accordance with Section 73-10-33:

7734 (a) a management plan for a water conveyance facility in the possession of the Division
7735 of Water Resources or the Board of Water Resources; or

7736 (b) an outline of an emergency response plan in possession of the state or a county or
7737 municipality;

7738 (59) the following records in the custody or control of the Office of Inspector General
7739 of Medicaid Services, created in Section 63A-13-201:

7740 (a) records that would disclose information relating to allegations of personal
7741 misconduct, gross mismanagement, or illegal activity of a person if the information or
7742 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
7743 through other documents or evidence, and the records relating to the allegation are not relied
7744 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation

7745 report or final audit report;

7746 (b) records and audit workpapers to the extent they would disclose the identity of a
7747 person who, during the course of an investigation or audit, communicated the existence of any
7748 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
7749 regulation adopted under the laws of this state, a political subdivision of the state, or any
7750 recognized entity of the United States, if the information was disclosed on the condition that
7751 the identity of the person be protected;

7752 (c) before the time that an investigation or audit is completed and the final
7753 investigation or final audit report is released, records or drafts circulated to a person who is not
7754 an employee or head of a governmental entity for the person's response or information;

7755 (d) records that would disclose an outline or part of any investigation, audit survey
7756 plan, or audit program; or

7757 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
7758 investigation or audit;

7759 (60) records that reveal methods used by the Office of Inspector General of Medicaid
7760 Services, the fraud unit, or the Department of [~~Health~~] Health and Human Services, to discover
7761 Medicaid fraud, waste, or abuse;

7762 (61) information provided to the Department of [~~Health~~] Health and Human Services
7763 or the Division of Professional Licensing under Subsections 58-67-304(3) and (4) and
7764 Subsections 58-68-304(3) and (4);

7765 (62) a record described in Section 63G-12-210;

7766 (63) captured plate data that is obtained through an automatic license plate reader
7767 system used by a governmental entity as authorized in Section 41-6a-2003;

7768 (64) any record in the custody of the Utah Office for Victims of Crime relating to a
7769 victim, including:

7770 (a) a victim's application or request for benefits;

7771 (b) a victim's receipt or denial of benefits; and

7772 (c) any administrative notes or records made or created for the purpose of, or used to,
7773 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
7774 Reparations Fund;

7775 (65) an audio or video recording created by a body-worn camera, as that term is

defined in Section [77-7a-103](#), that records sound or images inside a hospital or health care facility as those terms are defined in Section [78B-3-403](#), inside a clinic of a health care provider, as that term is defined in Section [78B-3-403](#), or inside a human service program as that term is defined in Section ~~[62A-2-101]~~ [26B-2-101](#), except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection [76-2-408](#)(1)(f); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;

(66) a record pertaining to the search process for a president of an institution of higher education described in Section [53B-2-102](#), except for application materials for a publicly announced finalist;

(67) an audio recording that is:

(a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;

(b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:

(i) is responding to an individual needing resuscitation or with a life-threatening condition; and

(ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and

(c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;

(68) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section [36-12-8](#), for an

7807 employment position with the Legislature;
7808 (69) work papers as defined in Section 31A-2-204;
7809 (70) a record made available to Adult Protective Services or a law enforcement agency
7810 under Section 61-1-206;
7811 (71) a record submitted to the Insurance Department in accordance with Section
7812 31A-37-201;
7813 (72) a record described in Section 31A-37-503;
7814 (73) any record created by the Division of Professional Licensing as a result of
7815 Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);
7816 (74) a record described in Section 72-16-306 that relates to the reporting of an injury
7817 involving an amusement ride;
7818 (75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual
7819 on a political petition, or on a request to withdraw a signature from a political petition,
7820 including a petition or request described in the following titles:
7821 (a) Title 10, Utah Municipal Code;
7822 (b) Title 17, Counties;
7823 (c) Title 17B, Limited Purpose Local Government Entities - Local Districts;
7824 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
7825 (e) Title 20A, Election Code;
7826 (76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in
7827 a voter registration record;
7828 (77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a
7829 signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a
7830 local political subdivision collected or held under, or in relation to, Title 20A, Election Code;
7831 (78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part
7832 5, Victims Guidelines for Prosecutors Act;
7833 (79) a record submitted to the Insurance Department under Section 31A-48-103;
7834 (80) personal information, as defined in Section 63G-26-102, to the extent disclosure is
7835 prohibited under Section 63G-26-103;
7836 (81) an image taken of an individual during the process of booking the individual into
7837 jail, unless:

7838 (a) the individual is convicted of a criminal offense based upon the conduct for which
7839 the individual was incarcerated at the time the image was taken;

7840 (b) a law enforcement agency releases or disseminates the image:

7841 (i) after determining that the individual is a fugitive or an imminent threat to an
7842 individual or to public safety and releasing or disseminating the image will assist in
7843 apprehending the individual or reducing or eliminating the threat; or

7844 (ii) to a potential witness or other individual with direct knowledge of events relevant
7845 to a criminal investigation or criminal proceeding for the purpose of identifying or locating an
7846 individual in connection with the criminal investigation or criminal proceeding; or

7847 (c) a judge orders the release or dissemination of the image based on a finding that the
7848 release or dissemination is in furtherance of a legitimate law enforcement interest;

7849 (82) a record:

7850 (a) concerning an interstate claim to the use of waters in the Colorado River system;

7851 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a
7852 representative from another state or the federal government as provided in Section

7853 [63M-14-205](#); and

7854 (c) the disclosure of which would:

7855 (i) reveal a legal strategy relating to the state's claim to the use of the water in the
7856 Colorado River system;

7857 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to
7858 negotiate the best terms and conditions regarding the use of water in the Colorado River
7859 system; or

7860 (iii) give an advantage to another state or to the federal government in negotiations
7861 regarding the use of water in the Colorado River system;

7862 (83) any part of an application described in Section [63N-16-201](#) that the Governor's
7863 Office of Economic Opportunity determines is nonpublic, confidential information that if
7864 disclosed would result in actual economic harm to the applicant, but this Subsection (83) may
7865 not be used to restrict access to a record evidencing a final contract or approval decision;

7866 (84) the following records of a drinking water or wastewater facility:

7867 (a) an engineering or architectural drawing of the drinking water or wastewater facility;

7868 and

(b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or wastewater facility uses to secure, or prohibit access to, the records described in Subsection (84)(a); and

(85) a statement that an employee of a governmental entity provides to the governmental entity as part of the governmental entity's personnel or administrative investigation into potential misconduct involving the employee if the governmental entity:

(a) requires the statement under threat of employment disciplinary action, including possible termination of employment, for the employee's refusal to provide the statement; and

(b) provides the employee assurance that the statement cannot be used against the employee in any criminal proceeding.

Section 85. Section 63G-3-501 is amended to read:

63G-3-501. Administrative Rules Review and General Oversight Committee.

(1) (a) There is created an Administrative Rules Review and General Oversight Committee of the following 10 permanent members:

(i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and

(ii) five members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.

(b) Each permanent member shall serve:

(i) for a two-year term; or

(ii) until the permanent member's successor is appointed.

(c) (i) A vacancy exists when a permanent member ceases to be a member of the Legislature, or when a permanent member resigns from the committee.

(ii) When a vacancy exists:

(A) if the departing member is a member of the Senate, the president of the Senate shall appoint a member of the Senate to fill the vacancy; or

(B) if the departing member is a member of the House of Representatives, the speaker of the House of Representatives shall appoint a member of the House of Representatives to fill the vacancy.

(iii) The newly appointed member shall serve the remainder of the departing member's unexpired term.

7900 (d) (i) The president of the Senate shall designate a member of the Senate appointed
7901 under Subsection (1)(a)(i) as a cochair of the committee.

7902 (ii) The speaker of the House of Representatives shall designate a member of the
7903 House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.

7904 (e) Three representatives and three senators from the permanent members are a quorum
7905 for the transaction of business at any meeting.

7906 (f) (i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each
7907 month to review new agency rules, amendments to existing agency rules, and repeals of
7908 existing agency rules.

7909 (ii) The committee chairs may suspend the meeting requirement described in
7910 Subsection (1)(f)(i) at the committee chairs' discretion.

7911 (2) The office shall submit a copy of each issue of the bulletin to the committee.

7912 (3) (a) The committee shall exercise continuous oversight of the rulemaking process.

7913 (b) The committee shall examine each rule, including any rule made according to the
7914 emergency rulemaking procedure described in Section [63G-3-304](#), submitted by an agency to
7915 determine:

7916 (i) whether the rule is authorized by statute;

7917 (ii) whether the rule complies with legislative intent;

7918 (iii) the rule's impact on the economy and the government operations of the state and
7919 local political subdivisions;

7920 (iv) the rule's impact on affected persons;

7921 (v) the rule's total cost to entities regulated by the state;

7922 (vi) the rule's benefit to the citizens of the state; and

7923 (vii) whether adoption of the rule requires legislative review or approval.

7924 (c) The committee may examine and review:

7925 (i) any executive order issued pursuant to Title 53, Chapter 2a, Part 2, Disaster
7926 Response and Recovery Act;

7927 (ii) any public health order issued during a public health emergency declared in
7928 accordance with [~~Title 26, Utah Health Code, or~~] Title 26A, Local Health Authorities, or Title
7929 26B, Utah Health and Human Services Code; or

7930 (iii) an agency's policies that:

- 7931 (A) affect a class of persons other than the agency; or
7932 (B) are contrary to legislative intent.
- 7933 (d) (i) To carry out these duties, the committee may examine any other issues that the
7934 committee considers necessary.
- 7935 (ii) Notwithstanding anything to the contrary in this section, the committee may not
7936 examine an agency's internal policies, procedures, or practices.
- 7937 (iii) The committee may also notify and refer rules to the chairs of the interim
7938 committee that has jurisdiction over a particular agency when the committee determines that an
7939 issue involved in an agency's rules may be more appropriately addressed by that committee.
- 7940 (e) An agency shall respond to a request from the committee for:
- 7941 (i) an agency's policy described in Subsection (3)(c)(iii); or
7942 (ii) information related to an agency's policy described in Subsection (3)(c)(iii).
- 7943 (f) In reviewing a rule, the committee shall follow generally accepted principles of
7944 statutory construction.
- 7945 (4) When the committee reviews an existing rule, the committee chairs shall invite the
7946 Senate and House chairs of the standing committee and of the appropriation subcommittee that
7947 have jurisdiction over the agency whose existing rule is being reviewed to participate as
7948 nonvoting, ex officio members with the committee.
- 7949 (5) The committee may request that the Office of the Legislative Fiscal Analyst prepare
7950 a fiscal note on any rule.
- 7951 (6) In order to accomplish the committee's functions described in this chapter, the
7952 committee has all the powers granted to legislative interim committees under Section [36-12-11](#).
- 7953 (7) (a) The committee may prepare written findings of the committee's review of a rule,
7954 policy, practice, or procedure and may include any recommendation, including:
- 7955 (i) legislative action; or
7956 (ii) action by a standing committee or interim committee.
- 7957 (b) When the committee reviews a rule, the committee shall provide to the agency that
7958 enacted the rule:
- 7959 (i) the committee's findings, if any; and
7960 (ii) a request that the agency notify the committee of any changes the agency makes to
7961 the rule.

(c) The committee shall provide a copy of the committee's findings described in Subsection (7)(a), if any, to:

- (i) any member of the Legislature, upon request;
- (ii) any person affected by the rule, upon request;
- (iii) the president of the Senate;
- (iv) the speaker of the House of Representatives;
- (v) the Senate and House chairs of the standing committee that has jurisdiction over the agency whose rule, policy, practice, or procedure is the subject of the finding; and
- (vi) the Senate and House chairs of the appropriation subcommittee that has jurisdiction over the agency that made the rule.

(8) (a) (i) The committee may submit a report on the committee's review under this section to each member of the Legislature at each regular session.

(ii) The report shall include:

- (A) any finding or recommendation the committee made under Subsection (7);
- (B) any action an agency took in response to a committee recommendation; and
- (C) any recommendation by the committee for legislation.

(b) If the committee receives a recommendation not to reauthorize a rule, as described in Subsection [63G-3-301](#)(13)(b), and the committee recommends to the Legislature reauthorization of the rule, the committee shall submit a report to each member of the Legislature detailing the committee's decision.

(c) If the committee recommends legislation, the committee may prepare legislation for consideration by the Legislature at the next general session.

Section 86. Section **63G-4-102** is amended to read:

63G-4-102. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

7993 (2) This chapter does not govern:
7994 (a) the procedure for making agency rules, or judicial review of the procedure or rules;
7995 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
7996 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the
7997 issuance of a tax assessment, except that this chapter governs an agency action commenced by
7998 a taxpayer or by another person authorized by law to contest the validity or correctness of the
7999 action;
8000 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
8001 commutation or termination of a sentence, or to the rescission, termination, or revocation of
8002 parole or probation, to the discipline of, resolution of a grievance of, supervision of,
8003 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah
8004 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction
8005 of the [~~Division of Substance Abuse~~] Office of Substance Use and Mental Health, or a person
8006 on probation or parole, or judicial review of the action;
8007 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
8008 student or teacher in a school or educational institution, or judicial review of the action;
8009 (e) an application for employment and internal personnel action within an agency
8010 concerning its own employees, or judicial review of the action;
8011 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
8012 Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that
8013 this chapter governs an agency action commenced by the employer, licensee, or other person
8014 authorized by law to contest the validity or correctness of the citation or assessment;
8015 (g) state agency action relating to management of state funds, the management and
8016 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
8017 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
8018 the state, except as provided in those contracts, or judicial review of the action;
8019 (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of
8020 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
8021 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
8022 Holding Companies, and Chapter 7, Governmental Immunity Act of Utah, or judicial review of
8023 the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under [~~Title 26, Chapter 8a, Utah Emergency Medical Services System Act~~] Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Chapter 2, Government Records Access and Management Act, except as provided in Section [63G-2-603](#);

(q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

(s) the issuance and enforcement of an initial order under Section [73-2-25](#);

8055 (t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and
8056 (ii) an action taken by the Division of Securities under a hearing conducted under
8057 Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange
8058 of securities described in Subsection 61-1-11.1(1);

8059 (u) state agency action relating to water well driller licenses, water well drilling
8060 permits, water well driller registration, or water well drilling construction standards, or judicial
8061 review of the action;

8062 (v) the issuance of a determination and order under Title 34A, Chapter 5, Utah
8063 Antidiscrimination Act;

8064 (w) state environmental studies and related decisions by the Department of
8065 Transportation approving state or locally funded projects, or judicial review of the action;

8066 (x) the suspension of operations under Subsection 32B-1-304(3); or

8067 (y) the issuance of a determination of violation by the Governor's Office of Economic
8068 Opportunity under Section 11-41-104.

8069 (3) This chapter does not affect a legal remedy otherwise available to:

8070 (a) compel an agency to take action; or

8071 (b) challenge an agency's rule.

8072 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
8073 proceeding, or the presiding officer during an adjudicative proceeding from:

8074 (a) requesting or ordering a conference with parties and interested persons to:

8075 (i) encourage settlement;

8076 (ii) clarify the issues;

8077 (iii) simplify the evidence;

8078 (iv) facilitate discovery; or

8079 (v) expedite the proceeding; or

8080 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
8081 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
8082 except to the extent that the requirements of those rules are modified by this chapter.

8083 (5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by
8084 this chapter, except as explicitly provided in that section.

8085 (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is

8086 governed by this chapter.

8087 (6) This chapter does not preclude an agency from enacting a rule affecting or
8088 governing an adjudicative proceeding or from following the rule, if the rule is enacted
8089 according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if
8090 the rule conforms to the requirements of this chapter.

8091 (7) (a) If the attorney general issues a written determination that a provision of this
8092 chapter would result in the denial of funds or services to an agency of the state from the federal
8093 government, the applicability of the provision to that agency shall be suspended to the extent
8094 necessary to prevent the denial.

8095 (b) The attorney general shall report the suspension to the Legislature at its next
8096 session.

8097 (8) Nothing in this chapter may be interpreted to provide an independent basis for
8098 jurisdiction to review final agency action.

8099 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
8100 cause shown, from lengthening or shortening a time period prescribed in this chapter, except
8101 the time period established for judicial review.

8102 (10) Notwithstanding any other provision of this section, this chapter does not apply to
8103 a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent
8104 expressly provided in Section 19-1-301.5.

8105 (11) Subsection (2)(w), regarding action taken based on state environmental studies
8106 and policies of the Department of Transportation, applies to any claim for which a court of
8107 competent jurisdiction has not issued a final unappealable judgment or order before May 14,
8108 2019.

8109 Section 87. Section **63G-7-201** is amended to read:

8110 **63G-7-201. Immunity of governmental entities and employees from suit.**

8111 (1) Except as otherwise provided in this chapter, each governmental entity and each
8112 employee of a governmental entity are immune from suit for any injury that results from the
8113 exercise of a governmental function.

8114 (2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a
8115 governmental entity, its officers, and its employees are immune from suit:

8116 (a) as provided in Section 78B-4-517; and

8117 (b) for any injury or damage resulting from the implementation of or the failure to
8118 implement measures to:

8119 (i) control the causes of epidemic and communicable diseases and other conditions
8120 significantly affecting the public health or necessary to protect the public health as set out in
8121 Title 26A, Chapter 1, Local Health Departments;

8122 (ii) investigate and control suspected bioterrorism and disease as set out in ~~[Title 26,~~
8123 ~~Chapter 23b, Detection of Public Health Emergencies Act]~~ Sections 26B-7-316 through
8124 26B-7-324;

8125 (iii) respond to a national, state, or local emergency, a public health emergency as
8126 defined in Section ~~[26-23b-102]~~ 26B-7-301, or a declaration by the President of the United
8127 States or other federal official requesting public health related activities, including the use,
8128 provision, operation, and management of:

8129 (A) an emergency shelter;

8130 (B) housing;

8131 (C) a staging place; or

8132 (D) a medical facility; and

8133 (iv) adopt methods or measures, in accordance with Section ~~[26-1-30]~~ 26B-1-202, for
8134 health care providers, public health entities, and health care insurers to coordinate among
8135 themselves to verify the identity of the individuals they serve.

8136 (3) A governmental entity, its officers, and its employees are immune from suit, and
8137 immunity is not waived, for any injury if the injury arises out of or in connection with, or
8138 results from:

8139 (a) a latent dangerous or latent defective condition of:

8140 (i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or
8141 viaduct; or

8142 (ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

8143 (b) a latent dangerous or latent defective condition of any public building, structure,
8144 dam, reservoir, or other public improvement.

8145 (4) A governmental entity, its officers, and its employees are immune from suit, and
8146 immunity is not waived, for any injury proximately caused by a negligent act or omission of an
8147 employee committed within the scope of employment, if the injury arises out of or in

8148 connection with, or results from:

8149 (a) the exercise or performance, or the failure to exercise or perform, a discretionary
8150 function, whether or not the discretion is abused;

8151 (b) except as provided in Subsections 63G-7-301(2)(j), (3), and (4), assault, battery,
8152 false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process,
8153 libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation
8154 of civil rights;

8155 (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue,
8156 deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar
8157 authorization;

8158 (d) a failure to make an inspection or making an inadequate or negligent inspection;

8159 (e) the institution or prosecution of any judicial or administrative proceeding, even if
8160 malicious or without probable cause;

8161 (f) a misrepresentation by an employee whether or not the misrepresentation is
8162 negligent or intentional;

8163 (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

8164 (h) the collection or assessment of taxes;

8165 (i) an activity of the Utah National Guard;

8166 (j) the incarceration of a person in a state prison, county or city jail, or other place of
8167 legal confinement;

8168 (k) a natural condition on publicly owned or controlled land;

8169 (l) a condition existing in connection with an abandoned mine or mining operation;

8170 (m) an activity authorized by the School and Institutional Trust Lands Administration
8171 or the Division of Forestry, Fire, and State Lands;

8172 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
8173 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
8174 if:

8175 (i) the trail is designated under a general plan adopted by a municipality under Section
8176 10-9a-401 or by a county under Section 17-27a-401;

8177 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
8178 use as evidenced by a written agreement between:

8179 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail
8180 is located; and

8181 (B) the municipality or county where the trail is located; and

8182 (iii) the written agreement:

8183 (A) contains a plan for operation and maintenance of the trail; and

8184 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
8185 where the trail is located has, at a minimum, the same level of immunity from suit as the
8186 governmental entity in connection with or resulting from the use of the trail;

8187 (o) research or implementation of cloud management or seeding for the clearing of fog;

8188 (p) the management of flood waters, earthquakes, or natural disasters;

8189 (q) the construction, repair, or operation of flood or storm systems;

8190 (r) the operation of an emergency vehicle, while being driven in accordance with the
8191 requirements of Section 41-6a-212;

8192 (s) the activity of:

8193 (i) providing emergency medical assistance;

8194 (ii) fighting fire;

8195 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

8196 (iv) an emergency evacuation;

8197 (v) transporting or removing an injured person to a place where emergency medical
8198 assistance can be rendered or where the person can be transported by a licensed ambulance
8199 service; or

8200 (vi) intervening during a dam emergency;

8201 (t) the exercise or performance, or the failure to exercise or perform, any function
8202 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;

8203 (u) an unauthorized access to government records, data, or electronic information
8204 systems by any person or entity;

8205 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a
8206 public or private road; or

8207 (w) a communication between employees of one or more law enforcement agencies
8208 related to the employment, disciplinary history, character, professional competence, or physical
8209 or mental health of a peace officer, or a former, current, or prospective employee of a law

8210 enforcement agency, including any communication made in accordance with Section
8211 [53-14-101](#).

8212 Section 88. Section **63I-1-226** is repealed and reenacted to read:

8213 **63I-1-226. Repeal dates: Titles 26A through 26B.**

8214 (1) Subsection [26B-1-204](#)(2)(i), related to the Residential Child Care Licensing
8215 Advisory Committee, is repealed July 1, 2024.

8216 (2) Subsection [26B-1-204](#)(2)(k), related to the Primary Care Grant Committee, is
8217 repealed July 1, 2025.

8218 (3) Section [26B-1-230](#), related to governmental entities requiring COVID-19 vaccines,
8219 is repealed July 1, 2024.

8220 (4) Section [26B-1-315](#), which creates the Medicaid Expansion Fund, is repealed July 1,
8221 2024.

8222 (5) Section [26B-1-319](#), which creates the Spinal Cord and Brain Injury Rehabilitation
8223 Fund, is repealed January 1, 2025.

8224 (6) Section [26B-1-320](#), which creates the Pediatric Neuro-Rehabilitation Fund, is
8225 repealed January 1, 2025.

8226 (7) Subsection [26B-1-329](#)(6), related to the Behavioral Health Crisis Response
8227 Commission, is repealed July 1, 2023.

8228 (8) Section [26B-1-402](#), related to the Rare Disease Advisory Council Grant Program, is
8229 repealed July 1, 2026.

8230 (9) Section [26B-1-409](#), which creates the Utah Digital Health Service Commission, is
8231 repealed July 1, 2025.

8232 (10) Section [26B-1-410](#), which creates the Primary Care Grant Committee, is repealed
8233 July 1, 2025.

8234 (11) Section [26B-1-415](#), which creates the Residential Child Care Licensing Advisory
8235 Committee, is repealed July 1, 2024.

8236 (12) Section [26B-1-416](#), which creates the Utah Children's Health Insurance Program
8237 Advisory Council, is repealed July 1, 2025.

8238 (13) Section [26B-1-417](#), which creates the Traumatic Brain Injury Advisory
8239 Committee, is repealed July 1, 2025.

8240 (14) Section [26B-1-418](#), which creates the Spinal Cord and Brain Injury Rehabilitation

8241 Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee, is repealed January 1,
8242 2025.

8243 (15) Section 26B-1-422, which creates the Early Childhood Utah Advisory Council, is
8244 repealed July 1, 2026.

8245 (16) Section 26B-1-428, which creates the Youth Electronic Cigarette, Marijuana, and
8246 Other Drug Prevention Program, is repealed July 1, 2025.

8247 (17) Section 26B-1-430, which creates the Coordinating Council for Persons with
8248 Disabilities, is repealed July 1, 2027.

8249 (18) Section 26B-1-431, which creates the Forensic Mental Health Coordinating
8250 Council, is repealed July 1, 2023.

8251 (19) Section 26B-1-432, which creates the Newborn Hearing Screening Committee, is
8252 repealed July 1, 2026.

8253 (20) Section 26B-2-309, related to assisted living facility transfers, is repealed July 1,
8254 2023.

8255 (21) Section 26B-2-407, related to drinking water quality in child care centers, is
8256 repealed July 1, 2027.

8257 (22) Subsection 26B-3-107(9), which addresses reimbursement for dental hygienists, is
8258 repealed July 1, 2028.

8259 (23) Section 26B-3-136, which creates the Children's Health Care Coverage Program,
8260 is repealed July 1, 2025.

8261 (24) Section 26B-3-137, related to reimbursement for the National Diabetes Prevention
8262 Program, is repealed June 30, 2027.

8263 (25) Subsection 26B-3-213(2), the language that states "and the Behavioral Health
8264 Crisis Response Commission created in Section 63C-18-202" is repealed July 1, 2023.

8265 (26) Sections 26B-3-302 through 26B-3-309, regarding the Drug Utilization Review
8266 Board, are repealed July 1, 2027.

8267 (27) Title 26B, Chapter 3, Part 5, Inpatient Hospital Assessment, is repealed July 1,
8268 2024.

8269 (28) Title 26B, Chapter 3, Part 6, Medicaid Expansion Hospital Assessment, is
8270 repealed July 1, 2024.

8271 (29) Title 26B, Chapter 3, Part 7, Hospital Provider Assessment, is repealed July 1,

8272 2024.

8273 (30) Section 26B-4-136, related to the Volunteer Emergency Medical Service

8274 Personnel Health Insurance Program, is repealed July 1, 2027.

8275 (31) Section 26B-4-710, related to rural residency training programs, is repealed July 1,

8276 2025.

8277 (32) Subsections 26B-5-112(1) and (5), the language that states "In consultation with

8278 the Behavioral Health Crisis Response Commission, established in Section 63C-18-202," is

8279 repealed January 1, 2023.

8280 (33) Section 26B-5-114, related to the Behavioral Health Receiving Center Grant

8281 Program, is repealed December 31, 2023.

8282 (34) Section 26B-5-118, related to collaborative care grant programs, is repealed

8283 December 31, 2024.

8284 (35) In relation to the Behavioral Health Crisis Response Commission, on July 1, 2023:

8285 (a) Subsection 26B-5-609(1)(a) is repealed;

8286 (b) Subsection 26B-5-609(3)(a), the language that states "With recommendations from

8287 the commission," is repealed;

8288 (c) Subsection 26B-5-610(1)(b) is repealed;

8289 (d) Subsection 26B-5-610(2)(b), the language that states "and in consultation with the

8290 commission," is repealed; and

8291 (e) Subsection 26B-5-610(4) is repealed.

8292 (36) Subsections 26B-5-611(1)(a) and (10), in relation to the Utah Substance Use and

8293 Mental Health Advisory Council, are repealed January 1, 2033.

8294 (37) Section 26B-5-612, related to integrated behavioral health care grant programs, is

8295 repealed December 31, 2025.

8296 (38) Subsection 26B-7-119(5), related to reports to the Legislature on the outcomes of

8297 the Hepatitis C Outreach Pilot Program, is repealed July 1, 2028.

8298 (39) Section 26B-7-224, related to reports to the Legislature on violent incidents and

8299 fatalities involving substance abuse, is repealed December 31, 2027.

8300 (40) Title 26B, Chapter 8, Part 5, Utah Health Data Authority, is repealed July 1, 2024.

8301 (41) Section 26B-8-513, related to identifying overuse of non-evidence-based health

8302 care, is repealed December 31, 2023.

8303 Section 89. Section **63I-1-262** is amended to read:

8304 **63I-1-262. Repeal dates: Title 62.**

8305 [~~(1) Section **62A-3-209** is repealed July 1, 2023.~~]

8306 [~~(2) Sections **62A-5a-101**, **62A-5a-102**, **62A-5a-103**, and **62A-5a-104**, which create the~~
8307 ~~Coordinating Council for Persons with Disabilities, are repealed July 1, 2027.~~]

8308 [~~(3) Subsections **62A-15-116**(1) and (5), the language that states "In consultation with~~
8309 ~~the Behavioral Health Crisis Response Commission, established in Section **63C-18-202**," is~~
8310 ~~repealed January 1, 2023.~~]

8311 [~~(4) Section **62A-15-118** is repealed December 31, 2023.~~]

8312 [~~(5) Section **62A-15-124** is repealed December 31, 2024.~~]

8313 [~~(6) Section **62A-15-605**, which creates the Forensic Mental Health Coordinating~~
8314 ~~Council, is repealed July 1, 2023.~~]

8315 [~~(7) Subsections **62A-15-1100**(1) and **62A-15-1101**(9), in relation to the Utah~~
8316 ~~Substance Use and Mental Health Advisory Council, are repealed January 1, 2033.~~]

8317 [~~(8) In relation to the Behavioral Health Crisis Response Commission, on July 1,~~
8318 ~~2023.~~]

8319 [~~(a) Subsections **62A-15-1301**(2) and **62A-15-1401**(1) are repealed;~~]

8320 [~~(b) Subsection **62A-15-1302**(1)(b), the language that states "and in consultation with~~
8321 ~~the commission" is repealed;~~]

8322 [~~(c) Subsection **62A-15-1303**(1), the language that states "In consultation with the~~
8323 ~~commission," is repealed;~~]

8324 [~~(d) Subsection **62A-15-1402**(2)(a), the language that states "With recommendations~~
8325 ~~from the commission," is repealed; and]~~

8326 [~~(e) Subsection **62A-15-1702**(6) is repealed.~~]

8327 Section 90. Section **63I-2-226** is repealed and reenacted to read:

8328 **63I-2-226. Repeal dates: Titles 26A through 26B.**

8329 (1) Subsection **26B-1-204**(2)(f), related to the Air Ambulance Committee, is repealed
8330 July 1, 2024.

8331 (2) Section **26B-1-405**, related to the Air Ambulance Committee, is repealed on July 1,
8332 2024.

8333 (3) Section **26B-1-419**, which creates the Utah Health Care Workforce Financial

8334 Assistance Program Advisory Committee, is repealed July 1, 2027.

8335 (4) In relation to the Air Ambulance Committee, on July 1, 2024, Subsection

8336 26B-2-231(1)(a) is amended to read:

8337 "(a) provide the patient or the patient's representative with the following information

8338 before contacting an air medical transport provider:

8339 (i) which health insurers in the state the air medical transport provider contracts with;

8340 (ii) if sufficient data is available, the average charge for air medical transport services

8341 for a patient who is uninsured or out of network; and

8342 (iii) whether the air medical transport provider balance bills a patient for any charge

8343 not paid by the patient's health insurer; and".

8344 (5) Subsection 26B-3-215(5), related to reporting on coverage for in vitro fertilization

8345 and genetic testing, is repealed July 1, 2030.

8346 (6) In relation to the Air Ambulance Committee, on July 1, 2024, Subsection

8347 26B-4-135(1)(a) is amended to read:

8348 "(a) provide the patient or the patient's representative with the following information

8349 before contacting an air medical transport provider:

8350 (i) which health insurers in the state the air medical transport provider contracts with;

8351 (ii) if sufficient data is available, the average charge for air medical transport services

8352 for a patient who is uninsured or out of network; and

8353 (iii) whether the air medical transport provider balance bills a patient for any charge

8354 not paid by the patient's health insurer; and".

8355 (7) Section 26B-4-702, related to the Utah Health Care Workforce Financial Assistance

8356 Program, is repealed July 1, 2027.

8357 (8) Section 26B-5-117, related to early childhood mental health support grant

8358 programs, is repealed January 2, 2025.

8359 (9) Subsection 26B-7-117(3), related to reports to the Legislature on syringe exchange

8360 and education, is repealed January 1, 2027.

8361 Section 91. Section 63I-2-262 is amended to read:

8362 **63I-2-262. Repeal dates: Title 62.**

8363 [(1) Section 62A-4a-1003.5, relating to the Management Information System, is

8364 repealed September 1, 2022.]

8365 [~~(2) Subsection 62A-5-103.1(6) is repealed January 1, 2023.~~]

8366 [~~(3) Section 62A-15-122 is repealed January 2, 2025]~~

8367 [~~(4) Title 62A, Chapter 15, Part 19, Mental Health Crisis Intervention Council, is~~
8368 ~~repealed January 1, 2023.~~]

8369 Section 92. Section **63J-1-315** is amended to read:

8370 **63J-1-315. Medicaid Growth Reduction and Budget Stabilization Account --**
8371 **Transfers of Medicaid growth savings -- Base budget adjustments.**

8372 (1) As used in this section:

8373 (a) "Department" means the Department of Health and Human Services created in
8374 Section [26B-1-201](#).

8375 (b) "Division" means the Division of [~~Medicaid and Health Financing~~] Integrated
8376 Healthcare created in Section [~~26-18-2.1~~] [26B-3-102](#).

8377 (c) "General Fund revenue surplus" means a situation where actual General Fund
8378 revenues collected in a completed fiscal year exceed the estimated revenues for the General
8379 Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the
8380 Legislature.

8381 (d) "Medicaid growth savings" means the Medicaid growth target minus Medicaid
8382 program expenditures, if Medicaid program expenditures are less than the Medicaid growth
8383 target.

8384 (e) "Medicaid growth target" means Medicaid program expenditures for the previous
8385 year multiplied by 1.08.

8386 (f) "Medicaid program" is as defined in Section [~~26-18-2~~] [26B-3-101](#).

8387 (g) "Medicaid program expenditures" means total state revenue expended for the
8388 Medicaid program from the General Fund, including restricted accounts within the General
8389 Fund, during a fiscal year.

8390 (h) "Medicaid program expenditures for the previous year" means total state revenue
8391 expended for the Medicaid program from the General Fund, including restricted accounts
8392 within the General Fund, during the fiscal year immediately preceding a fiscal year for which
8393 Medicaid program expenditures are calculated.

8394 (i) "Operating deficit" means that, at the end of the fiscal year, the unassigned fund
8395 balance in the General Fund is less than zero.

8396 (j) "State revenue" means revenue other than federal revenue.

8397 (k) "State revenue expended for the Medicaid program" includes money transferred or
8398 appropriated to the Medicaid Growth Reduction and Budget Stabilization Account only to the
8399 extent the money is appropriated for the Medicaid program by the Legislature.

8400 (2) There is created within the General Fund a restricted account to be known as the
8401 Medicaid Growth Reduction and Budget Stabilization Account.

8402 (3) (a) (i) Except as provided in Subsection (6), if, at the end of a fiscal year, there is a
8403 General Fund revenue surplus, the Division of Finance shall transfer an amount equal to
8404 Medicaid growth savings from the General Fund to the Medicaid Growth Reduction and
8405 Budget Stabilization Account.

8406 (ii) If the amount transferred is reduced to prevent an operating deficit, as provided in
8407 Subsection (6), the Legislature shall include, to the extent revenue is available, an amount
8408 equal to the reduction as an appropriation from the General Fund to the account in the base
8409 budget for the second fiscal year following the fiscal year for which the reduction was made.

8410 (b) If, at the end of a fiscal year, there is not a General Fund revenue surplus, the
8411 Legislature shall include, to the extent revenue is available, an amount equal to Medicaid
8412 growth savings as an appropriation from the General Fund to the account in the base budget for
8413 the second fiscal year following the fiscal year for which the reduction was made.

8414 (c) Subsections (3)(a) and (3)(b) apply only to the fiscal year in which the department
8415 implements the proposal developed under Section ~~[26-18-405]~~ [26B-3-202](#) to reduce the
8416 long-term growth in state expenditures for the Medicaid program, and to each fiscal year after
8417 that year.

8418 (4) The Division of Finance shall calculate the amount to be transferred under
8419 Subsection (3):

8420 (a) before transferring revenue from the General Fund revenue surplus to:

8421 (i) the General Fund Budget Reserve Account under Section [63J-1-312](#);

8422 (ii) the Wildland Fire Suppression Fund created in Section [65A-8-204](#), as described in
8423 Section [63J-1-314](#); and

8424 (iii) the State Disaster Recovery Restricted Account under Section [63J-1-314](#);

8425 (b) before earmarking revenue from the General Fund revenue surplus to the Industrial
8426 Assistance Account under Section [63N-3-106](#); and

8427 (c) before making any other year-end contingency appropriations, year-end set-asides,
8428 or other year-end transfers required by law.

8429 (5) (a) If, at the close of any fiscal year, there appears to be insufficient money to pay
8430 additional debt service for any bonded debt authorized by the Legislature, the Division of
8431 Finance may hold back from any General Fund revenue surplus money sufficient to pay the
8432 additional debt service requirements resulting from issuance of bonded debt that was
8433 authorized by the Legislature.

8434 (b) The Division of Finance may not spend the hold back amount for debt service
8435 under Subsection (5)(a) unless and until it is appropriated by the Legislature.

8436 (c) If, after calculating the amount for transfer under Subsection (3), the remaining
8437 General Fund revenue surplus is insufficient to cover the hold back for debt service required by
8438 Subsection (5)(a), the Division of Finance shall reduce the transfer to the Medicaid Growth
8439 Reduction and Budget Stabilization Account by the amount necessary to cover the debt service
8440 hold back.

8441 (d) Notwithstanding Subsections (3) and (4), the Division of Finance shall hold back
8442 the General Fund balance for debt service authorized by this Subsection (5) before making any
8443 transfers to the Medicaid Growth Reduction and Budget Stabilization Account or any other
8444 designation or allocation of General Fund revenue surplus.

8445 (6) Notwithstanding Subsections (3) and (4), if, at the end of a fiscal year, the Division
8446 of Finance determines that an operating deficit exists and that holding back earmarks to the
8447 Industrial Assistance Account under Section 63N-3-106, transfers to the Wildland Fire
8448 Suppression Fund and State Disaster Recovery Restricted Account under Section 63J-1-314,
8449 transfers to the General Fund Budget Reserve Account under Section 63J-1-312, or earmarks
8450 and transfers to more than one of those accounts, in that order, does not eliminate the operating
8451 deficit, the Division of Finance may reduce the transfer to the Medicaid Growth Reduction and
8452 Budget Stabilization Account by the amount necessary to eliminate the operating deficit.

8453 (7) The Legislature may appropriate money from the Medicaid Growth Reduction and
8454 Budget Stabilization Account only:

8455 (a) if Medicaid program expenditures for the fiscal year for which the appropriation is
8456 made are estimated to be 108% or more of Medicaid program expenditures for the previous
8457 year; and

8458 (b) for the Medicaid program.

8459 (8) The Division of Finance shall deposit interest or other earnings derived from
8460 investment of Medicaid Growth Reduction and Budget Stabilization Account money into the
8461 General Fund.

8462 Section 93. **Coordinating S.B. 208 with H.B. 26 -- Substantive and technical**
8463 **amendment.**

8464 If this S.B. 208 and H.B. 26, License Plate Amendments, both pass and become law,
8465 the Legislature intends that the Office of Legislative Research and General Counsel prepare the
8466 Utah Code database for publication on January 1, 2024, as follows:

8467 (1) the amendments to Section 631-2-226 in this bill supersede the amendments to
8468 Section 631-2-226 in H.B. 26;

8469 (2) add the language "Section 26B-1-302 is repealed on July 1, 2024." as a subsection
8470 to Section 631-2-226 in this bill, numerically according to title placement;

8471 (3) add the language "Section 26B-1-313 is repealed on July 1, 2024." as a subsection
8472 to Section 631-2-226 in this bill, numerically according to title placement;

8473 (4) add the language "Section 26B-1-314 is repealed on July 1, 2024." as a subsection
8474 to Section 631-2-226 in this bill, numerically according to title placement; and

8475 (5) add the language "Section 26B-1-321 is repealed on July 1, 2024." as a subsection
8476 to Section 631-2-226 in this bill, numerically according to title placement.

8477 Section 94. **Coordinating S.B. 208 with H.B. 36 -- Substantive and technical**
8478 **amendment.**

8479 If this S.B. 208 and H.B. 36, Long Term Care Ombudsman Amendments, both pass and
8480 become law, the Legislature intends that the Office of Legislative Research and General
8481 Counsel, in preparing the Utah Code database for publication, omit Subsection 631-1-226(20),
8482 relating to assisted living facility transfers, from this bill.

8483 Section 95. **Coordinating S.B. 208 with H.B. 48 -- Substantive and technical**
8484 **amendment.**

8485 If this S.B. 208 and H.B. 48, Early Childhood Amendments, both pass and become law,
8486 the Legislature intends that the Office of Legislative Research and General Counsel prepare the
8487 Utah Code database for publication as follows:

8488 (1) the amendments to Section 631-1-226 in this bill supersede the amendments to

8489 Section [63I-1-226](#) in H.B. 48; and

8490 (2) Subsection [63I-1-226](#)(15) in this S.B. 208 is amended to read:

8491 "(15) Section [26B-1-422](#), which creates the Early Childhood Utah Advisory Council, is

8492 repealed July 1, 2029.".

8493 Section 96. **Coordinating S.B. 208 with H.B. 66 -- Substantive and technical**

8494 **amendment.**

8495 If this S.B. 208 and H.B. 66, Behavioral Health Crisis Response Commission

8496 Amendments, both pass and become law, the Legislature intends that the Office of Legislative

8497 Research and General Counsel prepare the Utah Code database for publication as follows:

8498 (1) the amendments to Section [63I-1-226](#) in this bill supersede the amendments to

8499 Section [63I-1-226](#) in H.B. 66;

8500 (2) the amendments to Section [63I-1-262](#) in this bill supersede the amendments to

8501 Section [63I-1-262](#) in H.B. 66;

8502 (3) Subsection [63I-1-226](#)(7) in this S.B. 208 is amended to read:

8503 "(7) Subsection [26B-1-329](#)(6), related to the Behavioral Health Crisis Response

8504 Commission, is repealed December 31, 2026.";

8505 (4) Subsection [63I-1-226](#)(25) in this S.B. 208 is amended to read:

8506 "(25) Subsection [26B-3-213](#)(2), the language that states "and the Behavioral Health

8507 Crisis Response Commission created in Section [63C-18-202](#)" is repealed December 31, 2026.";

8508 (5) Subsection [63I-1-226](#)(32) in this S.B. 208 is amended to read:

8509 "(32) Subsections [26B-5-112](#)(1) and (5), the language that states "In consultation with

8510 the Behavioral Health Crisis Response Commission, established in Section [63C-18-202](#)," is

8511 repealed December 31, 2026.";

8512 (6) Subsection [63I-1-226](#)(33) in this S.B. 208 is amended to read:

8513 "(33) Section [26B-5-114](#), related to the Behavioral Health Receiving Center Grant

8514 Program, is repealed December 31, 2026.";

8515 (7) Subsection [63I-1-226](#)(35) in this S.B. 208 is amended to read:

8516 "(35) In relation to the Behavioral Health Crisis Response Commission, on December

8517 31, 2026:

8518 (a) Subsection [26B-5-609](#)(1)(a) is repealed;

8519 (b) Subsection [26B-5-609](#)(3)(a), the language that states "With recommendations from

8520 the commission," is repealed;

8521 (c) Subsection 26B-5-610(1)(b) is repealed;

8522 (d) Subsection 26B-5-610(2)(b), the language that states "and in consultation with the
8523 commission," is repealed; and

8524 (e) Subsection 26B-5-610(4), the language that states "In consultation with the
8525 commission," is repealed.";

8526 (8) add the language "Subsection 26B-1-324(4), the language that states "the
8527 Behavioral Health Crisis Response Commission, as defined in Section 63C-18-202," is
8528 repealed December 31, 2026." as a subsection to Section 63I-1-226 in this bill, numerically
8529 according to title placement;

8530 (9) add the language "Section 62A-15-116.5 is repealed December 31, 2026." as a
8531 subsection to Section 63I-1-226 in this bill, numerically according to title placement after
8532 Section 62A-15-116.5 has been technically renumbered to Title 26B, in accordance with the
8533 Revisor Instructions in this bill; and

8534 (10) add the language "Section 62A-15-125 is repealed December 31, 2026." as a
8535 subsection to Section 63I-1-226 in this bill, numerically according to title placement after
8536 Section 62A-15-125 has been technically renumbered to Title 26B, in accordance with the
8537 Revisor Instructions in this bill.

8538 **Section 97. Coordinating S.B. 208 with H.B. 131 -- Substantive and technical**
8539 **amendment.**

8540 If this S.B. 208 and H.B. 131, Vaccine Passport Prohibition, both pass and become law,
8541 the Legislature intends that the Office of Legislative Research and General Counsel, in
8542 preparing the Utah Code database for publication, omit Subsection 63I-1-226(3), related to
8543 governmental entities requiring COVID-19 vaccines, from this bill.

8544 **Section 98. Coordinating S.B. 208 with H.B. 248 -- Substantive and technical**
8545 **amendment.**

8546 If this S.B. 208 and H.B. 248, Mental Health Services for Adults, both pass and become
8547 law, the Legislature intends that the Office of Legislative Research and General Counsel
8548 prepare the Utah Code database for publication as follows:

8549 (1) the amendments to Section 63I-1-262 in this bill supersede the amendments to
8550 Section 63I-1-262 in H.B. 248; and

8551 (2) add the following language as a subsection to Section [631-1-226](#) in this bill,
8552 numerically according to title placement:

8553 "In relation to the Utah Assertive Community Treatment Act, on July 1, 2024:

8554 (a) Subsection [26B-5-606\(2\)\(a\)\(i\)](#), the language that states "and" is repealed; and

8555 (b) Subsections [26B-5-606\(2\)\(a\)\(ii\)](#), [26B-5-606\(2\)\(b\)](#), and [26B-5-606\(2\)\(c\)](#) are
8556 repealed."

8557 Section 99. **Coordinating S.B. 208 with H.B. 429 -- Substantive and technical**
8558 **amendment.**

8559 If this S.B. 208 and H.B. 429, Pregnant and Postpartum Inmate Amendments, both pass
8560 and become law, the Legislature intends that the Office of Legislative Research and General
8561 Counsel prepare the Utah Code database for publication as follows:

8562 (1) the amendments to Section [631-1-226](#) in this bill supersede the amendments to
8563 Section [631-1-226](#) in H.B. 429; and

8564 (2) add the language "Subsection [26B-1-401](#), regarding the Correctional Postnatal and
8565 Early Childhood Advisory Board, is repealed on July 1, 2026." as a subsection to Section
8566 [631-1-226](#) in this bill, numerically according to title placement.

8567 Section 100. **Coordinating S.B. 208 with H.B. 437 -- Substantive and technical**
8568 **amendment.**

8569 If this S.B. 208 and H.B. 437, Health Services Amendments, both pass and become
8570 law, the Legislature intends that the Office of Legislative Research and General Counsel
8571 prepare the Utah Code database for publication as follows:

8572 (1) the amendments to Section [631-2-226](#) in this bill supersede the amendments to
8573 Section [631-2-226](#) in H.B. 437;

8574 (2) add the language "Section [26-10-16](#) is repealed July 1, 2024." as a subsection to
8575 Section [631-2-226](#) in this bill, numerically according to title placement after Section [26-10-16](#)
8576 has been technically renumbered to Title 26B, in accordance with the Revisor Instructions in
8577 this bill; and

8578 (3) add the language "Section [26-18-29](#) is repealed July 1, 2024." as a subsection to
8579 Section [631-2-226](#) in this bill, numerically according to title placement after Section [26-18-29](#)
8580 has been technically renumbered to Title 26B, in accordance with the Revisor Instructions in
8581 this bill.

Section 101. **Coordinating S.B. 208 with H.B. 487 -- Substantive and technical amendment.**

If this S.B. 208 and H.B. 487, Sickle Cell Disease, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 631-2-226 in this bill supersede the amendments to Section 631-2-226 in H.B. 487; and

(2) add the language "Section 26B-7-120, relating to sickle cell disease, is repealed on July 1, 2025." as a subsection to Section 631-2-226 in this bill, numerically according to title placement.

Section 102. **Coordinating S.B. 208 with S.B. 64 -- Substantive and technical amendment.**

If this S.B. 208 and S.B. 64, Bureau of Emergency Medical Services Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication on July 1, 2023, as follows:

(1) the amendments to Section 631-1-226 in this bill supersede the amendments to Section 631-1-226 in S.B. 64;

(2) Subsection 631-1-226(2) in this S.B. 208 is amended to read:

"(2) Subsection 26B-1-204(2)(i), related to the Primary Care Grant Committee, is repealed July 1, 2025.";

(3) Subsection 631-1-226(30) in this bill, relating to the Volunteer Emergency Medical Service Personnel Health Insurance Program, be omitted;

(4) Subsection 631-2-226(1) in this bill, relating to the Air Ambulance Committee, be omitted;

(5) Subsection 631-2-226(2) in this bill, relating to the Air Ambulance Committee, be omitted; and

(6) Subsection 631-2-226(6) in this bill, relating to the Air Ambulance Committee, be omitted.

Section 103. **Coordinating S.B. 208 with S.B. 123 -- Substantive and technical amendment.**

If this S.B. 208 and S.B. 123, Boards and Commissions Modifications, both pass and

8613 become law, the Legislature intends that the Office of Legislative Research and General
8614 Counsel prepare the Utah Code database for publication as follows:

8615 (1) the amendments to Section 631-1-226 in this bill supersede the amendments to
8616 Section 631-1-226 in S.B. 123;

8617 (2) Subsection 631-1-226(2) in this S.B. 208 is amended to read:

8618 "(2) Subsection 26B-1-204(2)(i), related to the Primary Care Grant Committee, is
8619 repealed July 1, 2025.";

8620 (3) Subsection 631-1-226(1) in this bill, relating to the Residential Child Care
8621 Licensing Advisory Committee, be omitted; and

8622 (4) Subsection 631-1-226(11) in this bill, relating to the Residential Child Care
8623 Licensing Advisory Committee, be omitted.

8624 **Section 104. Coordinating S.B. 208 with S.B. 126 -- Substantive and technical**
8625 **amendment.**

8626 If this S.B. 208 and S.B. 126, Hospital Assessment Amendments, both pass and become
8627 law, the Legislature intends that the Office of Legislative Research and General Counsel
8628 prepare the Utah Code database for publication as follows:

8629 (1) the amendments to Section 631-1-226 in this bill supersede the amendments to
8630 Section 631-1-226 in S.B. 126; and

8631 (2) Subsection 631-1-226(29) in this S.B. 208 is amended to read:

8632 "(29) Title 26B, Chapter 3, Part 7, Hospital Provider Assessment, is repealed July 1,
8633 2028.".

8634 **Section 105. Revisor instructions.**

8635 The Legislature intends that the Office of Legislative Research and General Counsel, in
8636 preparing the Utah Code database for publication:

8637 (1) not enroll this bill if any of the following bills do not pass:

8638 (a) S.B. 38, Health and Human Services Recodification - Administration, Licensing,
8639 and Recovery Services;

8640 (b) S.B. 39, Health and Human Services Recodification - Health Care Assistance and
8641 Data;

8642 (c) S.B. 40, Health and Human Services Recodification - Health Care Delivery and
8643 Repeals; or

8644 (d) S.B. 41, Health and Human Services Recodification - Prevention, Supports,
8645 Substance Use and Mental Health; and
8646 (2) in any new language added to the Utah Code by legislation passed during the 2023
8647 General Session, replace any references to Titles 26 or 62A with the renumbered reference as it
8648 is renumbered in this bill.