

1                   **REVISOR'S TECHNICAL CORRECTIONS TO UTAH CODE**

2                                   2016 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Ralph Okerlund**

5                                   House Sponsor: James A. Dunnigan

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill modifies parts of the Utah Code to make technical corrections, including  
10 eliminating references to repealed provisions, making minor wording changes, updating  
11 cross-references, and correcting numbering.

12                   **Highlighted Provisions:**

13                   This bill:

14                   ▶ modifies parts of the Utah Code to make technical corrections, including  
15 eliminating references to repealed provisions, making minor wording changes,  
16 updating cross-references, correcting numbering, and fixing errors that were created  
17 from the previous year's session.

18                   **Money Appropriated in this Bill:**

19                   None

20                   **Other Special Clauses:**

21                   None

22                   **Utah Code Sections Affected:**

23                   AMENDS:

24                   4-11-5, as last amended by Laws of Utah 2010, Chapter 73

25                   9-6-507, as renumbered and amended by Laws of Utah 1992, Chapter 241

26                   9-8-302, as last amended by Laws of Utah 2007, Chapter 231

27                   9-8-404, as last amended by Laws of Utah 2006, Chapter 292

28                   10-1-114, as last amended by Laws of Utah 2015, Chapter 352

29                   10-3c-203, as enacted by Laws of Utah 2015, Chapter 352

- 30 **10-6-135**, as last amended by Laws of Utah 2014, Chapter 377
- 31 **10-8-15**, as last amended by Laws of Utah 2010, Chapter 378
- 32 **11-51-102**, as last amended by Laws of Utah 2014, Chapter 296
- 33 **13-14-204**, as last amended by Laws of Utah 2010, Chapter 33
- 34 **13-49-201**, as last amended by Laws of Utah 2015, Chapter 236
- 35 **13-49-203**, as enacted by Laws of Utah 2012, Chapter 375
- 36 **17B-1-502**, as last amended by Laws of Utah 2015, Chapter 352
- 37 **19-1-301.5**, as last amended by Laws of Utah 2015, Chapters 379, 441 and last
- 38 amended by Coordination Clause, Laws of Utah 2015, Chapter 451
- 39 **20A-1-306**, as last amended by Laws of Utah 2014, Chapter 189
- 40 **20A-7-702**, as last amended by Laws of Utah 2013, Chapter 320
- 41 **26-37a-102**, as enacted by Laws of Utah 2015, Chapter 440
- 42 **31A-22-619.6**, as enacted by Laws of Utah 2013, Chapter 417
- 43 **31A-33-106**, as last amended by Laws of Utah 2015, Chapter 427
- 44 **31A-37-301**, as last amended by Laws of Utah 2015, Chapter 244
- 45 **31A-37-502**, as last amended by Laws of Utah 2015, Chapter 244
- 46 **32B-1-102**, as last amended by Laws of Utah 2013, Chapter 349
- 47 **32B-4-415**, as enacted by Laws of Utah 2010, Chapter 276
- 48 **32B-6-404**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
- 49 **34-19-5**, as last amended by Laws of Utah 2007, Chapter 306
- 50 **34-20-3**, as last amended by Laws of Utah 2011, Chapter 297
- 51 **34-20-8**, as last amended by Laws of Utah 2011, Chapter 297
- 52 **34-30-13**, as enacted by Laws of Utah 1971, Chapter 74
- 53 **34-38-2**, as last amended by Laws of Utah 2010, Chapter 284
- 54 **34-41-102**, as enacted by Laws of Utah 1994, Chapter 18
- 55 **34-45-107**, as enacted by Laws of Utah 2009, Chapter 379
- 56 **34A-2-213**, as enacted by Laws of Utah 2013, Chapter 417
- 57 **35A-3-103**, as last amended by Laws of Utah 2015, Chapter 221

- 58            **35A-8-1705**, as renumbered and amended by Laws of Utah 2012, Chapter 212
- 59            **41-6a-1616**, as last amended by Laws of Utah 2015, Chapters 270, 405, and 412
- 60            **46-4-503**, as last amended by Laws of Utah 2014, Chapter 63
- 61            **53-8-210**, as renumbered and amended by Laws of Utah 1993, Chapters 26 and 234
- 62            **53A-1-301**, as last amended by Laws of Utah 2015, Chapter 415
- 63            **53A-15-1504**, as enacted by Laws of Utah 2015, Chapter 389
- 64            **53A-15-1508**, as enacted by Laws of Utah 2015, Chapter 389
- 65            **53A-15-1509**, as enacted by Laws of Utah 2015, Chapter 389
- 66            **57-8-8.1**, as enacted by Laws of Utah 2015, Chapter 22
- 67            **57-16a-202**, as enacted by Laws of Utah 2015, Chapter 233
- 68            **58-37-8**, as last amended by Laws of Utah 2015, Chapters 165 and 412
- 69            **58-69-801**, as last amended by Laws of Utah 2015, Chapter 343
- 70            **58-85-104**, as enacted by Laws of Utah 2015, Chapter 110
- 71            **59-12-103**, as last amended by Laws of Utah 2015, Chapter 283
- 72            **59-12-2218**, as last amended by Laws of Utah 2014, Chapter 271
- 73            **59-22-202**, as last amended by Laws of Utah 2004, Chapter 53
- 74            **62A-2-121**, as last amended by Laws of Utah 2015, Chapters 255 and 258
- 75            **62A-2-122**, as last amended by Laws of Utah 2015, Chapter 255
- 76            **63A-5-208**, as last amended by Laws of Utah 2012, Chapters 91, 347 and last amended
- 77            by Coordination Clause, Laws of Utah 2012, Chapter 347
- 78            **63A-13-204**, as last amended by Laws of Utah 2015, Chapter 135
- 79            **63E-1-203**, as last amended by Laws of Utah 2015, Chapter 226
- 80            **63G-2-202**, as last amended by Laws of Utah 2015, Chapter 258
- 81            **63G-6a-408**, as last amended by Laws of Utah 2015, Chapter 218
- 82            **63G-6a-2105**, as last amended by Laws of Utah 2014, Chapter 196
- 83            **63H-7a-603**, as enacted by Laws of Utah 2015, Chapter 411
- 84            **63I-1-220**, as last amended by Laws of Utah 2014, Chapter 231
- 85            **63I-2-217**, as and further amended by Revisor Instructions, Laws of Utah 2015,

86 Chapter 465 and last amended by Laws of Utah 2015, Chapter 465  
 87 **63I-2-220**, as last amended by Laws of Utah 2014, Chapter 3  
 88 **63I-2-277**, as last amended by Laws of Utah 2014, Chapter 189  
 89 **63M-4-602**, as enacted by Laws of Utah 2015, Chapter 356  
 90 **67-1a-14**, as enacted by Laws of Utah 2012, Chapter 35  
 91 **67-19-13.5**, as last amended by Laws of Utah 2015, Chapter 393  
 92 **70A-2-311**, as enacted by Laws of Utah 1965, Chapter 154  
 93 **73-2-22**, as last amended by Laws of Utah 2015, Chapter 258  
 94 **73-22-3**, as last amended by Laws of Utah 2015, Chapter 258  
 95 **78B-14-613**, as last amended by Laws of Utah 2015, Chapter 45

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

98 Section 1. Section **4-11-5** is amended to read:

99 **4-11-5. County bee inspector -- Appointment -- Termination -- Compensation.**

100 (1) The county executive upon the petition of five or more persons who raise bees  
 101 within the respective county shall, with the approval of the commissioner, appoint a qualified  
 102 person to act as a bee inspector within the county.

103 (2) A county bee inspector shall be employed at the pleasure of the county executive  
 104 and the commissioner, and is subject to termination of employment, with or without cause, at  
 105 the instance of either.

106 (3) Compensation for the county bee inspector shall be fixed by the county legislative  
 107 body.

108 (4) To be appointed a county bee inspector, a person shall demonstrate adequate  
 109 training and knowledge related to this chapter, bee diseases, and pests.

110 (5) A record concerning bee inspection shall be kept by the county executive or  
 111 commissioner.

112 (6) The county executive and the commissioner shall investigate a formal, written  
 113 complaint against a county bee inspector.

- 114 (7) The department may authorize an inspection if:
- 115 (a) a county bee inspector is not appointed; [~~and~~] or
- 116 (b) a conflict of interest arises with a county bee inspector.

117 Section 2. Section **9-6-507** is amended to read:

118 **9-6-507. Spending restrictions -- Return of endowment.**

119 (1) A qualifying organization, once it has received its endowment money from the state  
120 fund, may not expend any of [~~those~~] that money or the required matching money in its  
121 endowment fund, but may expend only the interest income earned on the money in its  
122 endowment fund.

123 (2) If the board determines that a qualifying organization has expended any amount of  
124 the endowment money received from the state fund or any amount of the required matching  
125 money, the qualifying organization shall return the amount it received from the state fund. The  
126 board shall reallocate any such returned money to qualifying organizations in the manner as  
127 provided in Section **9-6-506**.

128 Section 3. Section **9-8-302** is amended to read:

129 **9-8-302. Definitions.**

130 As used in this part and Part 4, Historic Sites:

131 (1) "Agency" means a department, division, office, bureau, board, commission, or  
132 other administrative unit of the state.

133 (2) "Ancient human remains" means all or part of the following that are historic or  
134 prehistoric:

- 135 (a) a physical individual; and
- 136 (b) any object on or attached to the physical individual that is placed on or attached to  
137 the physical individual as part of the death rite or ceremony of a culture.

138 (3) "Antiquities Section" means the Antiquities Section of the Division of State History  
139 created in Section **9-8-304**.

140 (4) "Archaeological resources" means all material remains and their associations,  
141 recoverable or discoverable through excavation or survey, that provide information pertaining

142 to the historic or prehistoric peoples of the state.

143 (5) "Collection" means a specimen and the associated records documenting the  
144 specimen and its recovery.

145 (6) "Curation" means management and care of collections according to standard  
146 professional museum practice, which may include inventorying, accessioning, labeling,  
147 cataloging, identifying, evaluating, documenting, storing, maintaining, periodically inspecting,  
148 cleaning, stabilizing, conserving, exhibiting, exchanging, or otherwise disposing of original  
149 collections or reproductions, and providing access to and facilities for studying collections.

150 (7) "Curation facility" [~~is defined as provided~~] means the same as that term is defined  
151 in Section 53B-17-603.

152 (8) "Division" means the Division of State History created in Section 9-8-201.

153 (9) "Excavate" means the recovery of archaeological resources.

154 (10) "Historic property" means any prehistoric or historic district, site, building,  
155 structure, or specimen included in, or eligible for inclusion in, the National Register of Historic  
156 Places or the State Register.

157 (11) "Indian tribe" means a tribe, band, nation, or other organized group or community  
158 of Indians that is recognized as eligible for the special programs and services provided by the  
159 United States to Indians because of their status as Indians.

160 (12) "Museum" means the Utah Museum of Natural History.

161 (13) (a) "Nonfederal land" means land in the state that is not owned, controlled, or held  
162 in trust by the federal government.

163 (b) "Nonfederal land" includes:

164 (i) land owned or controlled by:

165 (A) the state;

166 (B) a county, city, or town;

167 (C) an Indian tribe, if the land is not held in trust by the United States for the Indian  
168 tribe or the Indian tribe's members; or

169 (D) a person other than the federal government; or

170 (ii) school and institutional trust lands.

171 (14) "Principal investigator" means the individual with overall administrative  
172 responsibility for the survey or excavation project authorized by the permit.

173 (15) "Repository" ~~[is defined as provided]~~ means the same as that term is defined in  
174 Section 53B-17-603.

175 (16) "School and institutional trust lands" are those properties defined in Section  
176 53C-1-103.

177 (17) "Site" means any petroglyphs, pictographs, structural remains, or geographic  
178 location that is the source of archaeological resources or specimens.

179 (18) "Specimen" means all man-made artifacts and remains of an archaeological or  
180 anthropological nature found on or below the surface of the earth, excluding structural remains.

181 (19) "State historic preservation officer" means that position mentioned in ~~[16 U.S.C.~~  
182 ~~Sec. 470a]~~ 54 U.S.C. Sec. 302303, as amended.

183 (20) (a) "State land" means land owned by the state including the state's:

184 (i) legislative and judicial branches;

185 (ii) departments, divisions, agencies, boards, commissions, councils, and committees;

186 and

187 (iii) institutions of higher education as defined under Section 53B-3-102.

188 (b) "State land" does not include:

189 (i) land owned by a political subdivision of the state;

190 (ii) land owned by a school district;

191 (iii) private land; or

192 (iv) school and institutional trust lands.

193 (21) "Survey" means a surface investigation for archaeological resources that may  
194 include:

195 (a) insubstantial surface collection of archaeological resources; and

196 (b) limited subsurface testing that disturbs no more of a site than is necessary to  
197 determine the nature and extent of the archaeological resources or whether the site is a historic

198 property.

199 Section 4. Section **9-8-404** is amended to read:

200 **9-8-404. Agency responsibilities -- State historic preservation officer to comment**  
201 **on undertaking -- Public Lands Policy Coordinating Office may require joint analysis.**

202 (1) (a) Before expending any state funds or approving any undertaking, each agency  
203 shall:

204 (i) take into account the effect of the expenditure or undertaking on any historic  
205 property; and

206 (ii) unless exempted by agreement between the agency and the state historic  
207 preservation officer, provide the state historic preservation officer with a written evaluation of  
208 the expenditure's or undertaking's effect on the historic property.

209 (b) Once per month, the state historic preservation officer shall provide the Public  
210 Lands Policy Coordinating Office with a list of undertakings on which an agency or federal  
211 agency has requested the state historic preservation officer's or the Antiquities Section's advice  
212 or consultation.

213 (c) The Public Lands Policy Coordinating Office may request the joint analysis  
214 described in Subsections (2)(c) and (d) of any proposed undertaking on which the state historic  
215 preservation officer or Antiquities Section is providing advice or consultation.

216 (2) (a) If the state historic preservation officer does not concur with the agency's  
217 written evaluation required by Subsection (1)(a)(ii), the state historic preservation officer shall  
218 inform the Public Lands Policy Coordinating Office of any objections.

219 (b) The Public Lands Policy Coordinating Office shall review the state historic  
220 preservation officer's objections and determine whether or not to initiate the joint analysis  
221 established in Subsections (2)(c) and (d).

222 (c) If the Public Lands Policy Coordinating Office determines further analysis is  
223 necessary, the Public Lands Policy Coordinating Office shall, jointly with the agency and the  
224 state historic preservation officer, analyze:

225 (i) the cost of the undertaking, excluding costs attributable to the identification,

226 potential recovery, or excavation of historic properties;

227       (ii) the ownership of the land involved;

228       (iii) the likelihood of the presence and the nature and type of historical properties that  
229 may be affected by the expenditure or undertaking; and

230       (iv) clear and distinct alternatives for the identification, recovery, or excavation of  
231 historic properties, including ways to maximize the amount of information recovered and  
232 report that information at current standards of scientific rigor.

233       (d) The Public Lands Policy Coordinating Office, the agency, and the state historic  
234 preservation officer shall also consider as part of the joint analysis:

235       (i) the estimated costs of the alternatives in Subsection (2)(c)(iv) in total and as a  
236 percentage of the total cost of the undertaking; and

237       (ii) at least one plan for the identification, recovery, or excavation of historic properties  
238 that does not substantially increase the cost of the proposed undertaking.

239       (3) (a) (i) If the state historic preservation officer concurs with the agency's evaluation  
240 or if the Public Lands Policy Coordinating Office determines that the joint analysis is  
241 unnecessary, the state historic preservation officer shall, no later than 30 calendar days after  
242 receiving the agency's evaluation, provide formal comments on the agency's evaluation.

243       (ii) If a joint analysis is conducted, the state historic preservation officer shall provide  
244 formal comments on the agency's evaluation no later than 30 calendar days after the conclusion  
245 of the joint analysis.

246       (b) The state historic preservation officer shall ensure that the comments include the  
247 results of any joint analysis conducted under Subsection (2).

248       (c) If a joint analysis is not conducted, the state historic preservation officer's  
249 comments may include advice about ways to maximize the amount of historic, scientific,  
250 archaeological, anthropological, and educational information recovered, in addition to the  
251 physical recovery of specimens and the reporting of archaeological information at current  
252 standards of scientific rigor.

253       (4) (a) Once per month, the state historic preservation officer shall provide the Public

254 Lands Policy Coordinating Office with a list of comments the state historic preservation officer  
255 intends to make or has made as required or authorized by the National Historic Preservation  
256 Act, [~~16 U.S.C. Sec. 470~~] 54 U.S.C. Sec. 300101 et seq.

257 (b) At the request of the Public Lands Policy Coordinating Office, the state historic  
258 preservation officer shall discuss the comments with the Public Lands Policy Coordinating  
259 Office.

260 Section 5. Section **10-1-114** is amended to read:

261 **10-1-114. Repealer.**

262 Title 10, Chapter 1, General Provisions; Chapter 2, Incorporation, Classification,  
263 Boundaries, Consolidation, and Dissolution of Municipalities; Chapter 3, Municipal  
264 Government; Chapter 5, Uniform Town Fiscal Procedures Act [~~for Utah Towns~~]; and Chapter  
265 6, Uniform Fiscal Procedures Act [~~for Utah Cities~~], are repealed, except as provided in Section  
266 **10-1-115**.

267 Section 6. Section **10-3c-203** is amended to read:

268 **10-3c-203. Administrative and operational services -- Staff provided by county or**  
269 **municipal services district.**

270 (1) (a) The following officials elected or appointed, or persons employed by, the county  
271 in which a [~~municipality~~] metro township is located shall, for the purposes of interpreting and  
272 complying with applicable law, fulfill the responsibilities and hold the following metro  
273 township offices or positions:

274 (i) the county treasurer shall fulfill the duties and hold the powers of treasurer for the  
275 metro township;

276 (ii) the county clerk shall fulfill the duties and hold the powers of recorder and clerk for  
277 the metro township;

278 (iii) the county surveyor shall fulfill, on behalf of the metro township, all surveyor  
279 duties imposed by law;

280 (iv) the county engineer shall fulfill the duties and hold the powers of engineer for the  
281 metro township;

282 (v) the district attorney shall provide legal counsel to the metro township; and  
283 (vi) subject to Subsection (1)(b), the county auditor shall fulfill the duties and hold the  
284 powers of auditor for the metro township.

285 (b) (i) The county auditor shall fulfill the duties and hold the powers of auditor for the  
286 metro township to the extent that the county auditor's powers and duties are described in and  
287 delegated to the county auditor in accordance with Title 17, Chapter 19a, County Auditor, and  
288 a municipal auditor's powers and duties described in this title are the same.

289 (ii) Notwithstanding Subsection (1)(b), in a metro township, services described in  
290 Sections 17-19a-203, 17-19a-204, and 17-19a-205, and services other than those described in  
291 Subsection (1)(b)(i) that are provided by a municipal auditor in accordance with this title that  
292 are required by law, shall be performed by county staff other than the county auditor.

293 (2) (a) Nothing in Subsection (1) may be construed to relieve an official described in  
294 Subsections (1)(a)(i) through (iv) of a duty to either the county or metro township or a duty to  
295 fulfill that official's position as required by law.

296 (b) Notwithstanding Subsection (2)(a), an official or the official's deputy or other  
297 person described in Subsections (1)(a)(i) through (iv):

298 (i) is elected, appointed, or otherwise employed, in accordance with the provisions of  
299 Title 17, Counties, as applicable to that official's or person's county office;

300 (ii) is paid a salary and benefits and subject to employment discipline in accordance  
301 with the provisions of Title 17, Counties, as applicable to that official's or person's county  
302 office;

303 (iii) is not subject to:

304 (A) Chapter 3, Part 11, Personnel Rules and Benefits; or

305 (B) Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act; and

306 (iv) is not required to provide a bond for the applicable municipal office if a bond for  
307 the office is required by this title.

308 (3) The metro township may establish a planning commission in accordance with  
309 Section 10-9a-301 and an appeal authority in accordance with Section 10-9a-701.

310 (4) A municipal services district established in accordance with Title 17B, Chapter 2a,  
311 Part 11, Municipal Services District Act, and of which the metro township is a part, may  
312 provide staff to the metro township planning commission and appeal authority.

313 (5) (a) This section applies only to a metro township in which:

314 (i) the electors at an election under Section 10-2a-404 chose a metro township that is  
315 included in a municipal services district and has limited municipal powers; or

316 (ii) the metro township subsequently joins a municipal services district.

317 (b) This section does not apply to a metro township described in Subsection (5)(a) if  
318 the municipal services district is dissolved.

319 Section 7. Section 10-6-135 is amended to read:

320 **10-6-135. Operating and capital budgets.**

321 (1) (a) As used in this section, "operating and capital budget" means a plan of financial  
322 operation for an enterprise fund or other required special fund that includes estimates of  
323 operating resources, expenses, and other outlays for a fiscal period.

324 (b) Except as otherwise expressly provided, any reference to "budget" or "budgets" and  
325 the procedures and controls relating to them in other sections of this chapter do not apply or  
326 refer to the operating and capital budgets described in this section.

327 (2) At or before the time the governing body adopts budgets for the funds described in  
328 Section 10-6-109, the governing body shall adopt:

329 (a) an operating and capital budget for each enterprise fund for the ensuing fiscal  
330 period; and

331 (b) the type of budget for other special funds as required by the Uniform Accounting  
332 Manual for Utah Cities.

333 (3) (a) The governing body shall adopt and administer an operating and capital budget  
334 in accordance with this Subsection (3).

335 (b) A governing body may spend or transfer money deposited in an enterprise fund for  
336 a good, service, project, venture, or other purpose that is not directly related to the goods or  
337 services provided by the enterprise for which the enterprise fund was created, if the governing

338 body:

- 339 (i) transfers the money from the enterprise fund to another fund; and
- 340 (ii) complies with the hearing and notice requirements of Subsections (3)(f)(i), (ii), and
- 341 (iii).

342 (c) At or before the first regularly scheduled meeting of the governing body in the last  
343 May of the current fiscal period, the budget officer shall:

344 (i) prepare for the ensuing fiscal period and file with the governing body a tentative  
345 operating and capital budget for:

346 (A) each enterprise fund; and

347 (B) other required special funds;

348 (ii) include with the tentative operating and capital budget described in Subsection  
349 (3)~~(d)~~~~(i)~~(c) specific work programs as submitted by each department head; and

350 (iii) include any other supporting data required by the governing body.

351 (d) Each city of the first or second class shall, and each city of the third, fourth, or fifth  
352 class may, submit a supplementary estimate of all capital projects which a department head  
353 believes should be undertaken within the three next succeeding fiscal periods.

354 (e) (i) Subject to Subsection (3)(e)(ii), the budget officer shall prepare all estimates  
355 after review and consultation with each department head described in Subsection (3)(d).

356 (ii) After complying with Subsection (3)(e)(i), the budget officer may revise any  
357 departmental estimate before it is filed with the governing body.

358 (f) (i) Except as provided in Subsection (3)(f)(iv), if the governing body includes in a  
359 tentative budget or an amendment to a budget allocations or transfers from an enterprise fund  
360 to another fund or a good, service, project, venture, or purpose other than reasonable  
361 allocations of costs between the enterprise fund and the other fund, the governing body shall:

362 (A) hold a public hearing;

363 (B) prepare a written notice of the date, time, place, and purpose of the hearing, as  
364 described in Subsection (3)(f)(ii); and

365 (C) subject to Subsection (3)(f)(iii), mail the written notice to each enterprise fund

366 customer at least seven days before the day of the hearing.

367 (ii) The purpose portion of the written notice required under Subsection (3)(f)(i)(B)  
368 shall identify:

369 (A) the enterprise fund from which money is being transferred;

370 (B) the amount being transferred; and

371 (C) the fund to which the money is being transferred.

372 (iii) The governing body:

373 (A) may print the written notice required under Subsection (3)(f)(i) on the enterprise  
374 fund customer's bill; and

375 (B) shall include the written notice required under Subsection (3)(f)(i) as a separate  
376 notification mailed or transmitted with the enterprise fund customer's bill.

377 (iv) A governing body is not required to repeat the notice and hearing requirements in  
378 this Subsection (3)(f) if the funds to be allocated or transferred for the current year were  
379 previously approved by the governing body during the current year and at a public hearing that  
380 complies with the notice and hearing requirements of this Subsection (3)(f).

381 (4) (a) Each tentative budget, amendment to a budget, or budget shall be reviewed and  
382 considered by the governing body at any regular meeting or special meeting called for that  
383 purpose.

384 (b) The governing body may make changes in the tentative budgets.

385 (5) Budgets for enterprise or other required special funds shall comply with the public  
386 hearing requirements established in Sections 10-6-113 and 10-6-114.

387 (6) (a) Before the last June 30 of each fiscal period, or, in the case of a property tax  
388 increase under Sections 59-2-919 through 59-2-923, before August 31 of the year for which a  
389 property tax increase is proposed, the governing body shall adopt an operating and capital  
390 budget for each applicable fund for the ensuing fiscal period.

391 (b) A copy of the budget as finally adopted for each fund shall be:

392 (i) certified by the budget officer;

393 (ii) filed by the budget officer in the office of the city auditor or city recorder;

394 (iii) available to the public during regular business hours; and

395 (iv) filed with the state auditor within 30 days after the day on which the budget is  
396 adopted.

397 (7) (a) Upon final adoption, the operating and capital budget is in effect for the budget  
398 period, subject to later amendment.

399 (b) During the budget period the governing body may, in any regular meeting or special  
400 meeting called for that purpose, review any one or more of the operating and capital budgets  
401 for the purpose of determining if the total of any of them should be increased.

402 (c) If the governing body decides that the budget total of one or more of the funds  
403 should be increased under Subsection (7)(b), the governing body shall follow the procedures  
404 set forth in Section 10-6-136.

405 (8) Expenditures from operating and capital budgets shall conform to the requirements  
406 relating to budgets specified in Sections 10-6-121 through 10-6-126.

407 Section 8. Section 10-8-15 is amended to read:

408 **10-8-15. Waterworks -- Construction -- Extraterritorial jurisdiction.**

409 They may construct or authorize the construction of waterworks within or without the  
410 city limits, and for the purpose of maintaining and protecting the same from injury and the  
411 water from pollution their jurisdiction shall extend over the territory occupied by such works,  
412 and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the  
413 construction, maintenance and operation of the same, and over the stream or source from which  
414 the water is taken, for 15 miles above the point from which it is taken and for a distance of 300  
415 feet on each side of such stream and over highways along such stream or watercourse within  
416 said 15 miles and said 300 feet; provided, that the jurisdiction of cities of the first class shall be  
417 over the entire watershed, except that livestock shall be permitted to graze beyond [~~one~~  
418 ~~thousand~~] 1,000 feet from any such stream or source; and provided further, that each city of the  
419 first class shall provide a highway in and through its corporate limits, and so far as its  
420 jurisdiction extends, which may not be closed to cattle, horses, sheep or hogs driven through  
421 any such city, or through any territory adjacent thereto over which such city has jurisdiction,

422 but the board of commissioners of such city may enact ordinances placing under police  
423 regulations the manner of driving such cattle, sheep, horses and hogs through such city, or any  
424 territory adjacent thereto over which it has jurisdiction. They may enact all ordinances and  
425 regulations necessary to carry the power herein conferred into effect, and are authorized and  
426 empowered to enact ordinances preventing pollution or contamination of the streams or  
427 watercourses from which the inhabitants of cities derive their water supply, in whole or in part,  
428 for domestic and culinary purposes, and may enact ordinances prohibiting or regulating the  
429 construction or maintenance of any closet, privy, outhouse or urinal within the area over which  
430 the city has jurisdiction, and provide for permits for the construction and maintenance of the  
431 same. In granting such permits they may annex thereto such reasonable conditions and  
432 requirements for the protection of the public health as they deem proper, and may, if deemed  
433 advisable, require that all closets, privies and urinals along such streams shall be provided with  
434 effective septic tanks or other germ-destroying instrumentalities.

435 Section 9. Section **11-51-102** is amended to read:

436 **11-51-102. Definitions.**

437 As used in this chapter:

438 (1) "Chief executive officer" means:

439 (a) for a municipality:

440 (i) the mayor, if the municipality is operating under a form of municipal government  
441 other than the council-manager form of government; or

442 (ii) the city manager, if the municipality is operating under the council-manager form  
443 of government; or

444 (b) for a county:

445 (i) the chair of the county commission, if the county is operating under the county  
446 commission or expanded county commission form of government;

447 (ii) the county executive officer, if the county is operating under the county-executive  
448 council form of government; or

449 (iii) the county manager, if the county is operating under the council-manager form of

450 government.

451 (2) "County sheriff" means an individual elected to the office of county sheriff in the  
452 state who meets the qualifications described in Section 17-22-1.5.

453 (3) "Federal agency" means the United States Bureau of Land Management, the United  
454 States Forest Service, the United States Fish and Wildlife Service, or the National Park  
455 Service.

456 (4) "Federally managed land" means land that is managed by the United States Bureau  
457 of Land Management, the United States Forest Service, or the National Park Service.

458 (5) "National monument" means a national monument designated or declared in  
459 accordance with the Antiquities Act of 1906, [~~16 U.S.C. Sec. 431~~] 54 U.S.C. Sec. 320301 et  
460 seq.

461 (6) "National recreation area" means a recreation area designated by an act of  
462 Congress.

463 (7) "Political subdivision" means a municipality or county.

464 Section 10. Section 13-14-204 is amended to read:

465 **13-14-204. Franchisor's obligations related to service -- Franchisor audits -- Time**  
466 **limits.**

467 (1) Each franchisor shall specify in writing to each of its franchisees licensed as a new  
468 motor vehicle dealer in this state:

469 (a) the franchisee's obligations for new motor vehicle preparation, delivery, and  
470 warranty service on its products;

471 (b) the schedule of compensation to be paid to the franchisee for parts, work, and  
472 service; and

473 (c) the time allowance for the performance of work and service.

474 (2) (a) The schedule of compensation described in Subsection (1) shall include  
475 reasonable compensation for diagnostic work, as well as repair service, parts, and labor.

476 (b) Time allowances described in Subsection (1) for the diagnosis and performance of  
477 warranty work and service shall be reasonable and adequate for the work to be performed.

478 (3) (a) In the determination of what constitutes reasonable compensation under this  
479 section, the principal factor to be considered is the prevailing wage rates being paid by  
480 franchisees in the relevant market area in which the franchisee is doing business.

481 (b) Compensation of the franchisee for warranty service work may not be less than the  
482 amount charged by the franchisee for like parts and service to retail or fleet customers, if the  
483 amounts are reasonable. In the case of a recreational vehicle franchisee, reimbursement for  
484 parts used in the performance of warranty repairs, including those parts separately warranted  
485 directly to the consumer by a recreational vehicle parts supplier, may not be less than the  
486 franchisee's cost plus 20%. For purposes of this Subsection (3)(b), the term "cost" shall be that  
487 same price paid by a franchisee to a franchisor or supplier for the part when the part is  
488 purchased for a nonwarranty repair.

489 (4) A franchisor may not fail to:

490 (a) perform any warranty obligation;

491 (b) include in written notices of franchisor's recalls to new motor vehicle owners and  
492 franchisees the expected date by which necessary parts and equipment will be available to  
493 franchisees for the correction of the defects; or

494 (c) compensate any of the franchisees for repairs effected by the recall.

495 (5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the  
496 part is not defective, the franchisor at its option shall:

497 (a) return the part to the franchisee at the franchisor's expense; or

498 (b) pay the franchisee the cost of the part.

499 (6) (a) A claim made by a franchisee pursuant to this section for labor and parts shall  
500 be paid within 30 days after its approval.

501 (b) A claim shall be either approved or disapproved by the franchisor within 30 days  
502 after receipt of the claim on a form generally used by the franchisor and containing the  
503 generally required information. Any claim not specifically disapproved of in writing within 30  
504 days after the receipt of the form is considered to be approved and payment shall be made  
505 within 30 days.

506 (7) Warranty service audits of franchisee records may be conducted by the franchisor  
507 on a reasonable basis.

508 (8) A franchisee's claim for warranty compensation may be denied only if:

509 (a) the franchisee's claim is based on a nonwarranty repair;

510 (b) the franchisee lacks material documentation for the claim;

511 (c) the franchisee fails to comply materially with specific substantive terms and  
512 conditions of the franchisor's warranty compensation program; or

513 (d) the franchisor has a bona fide belief based on competent evidence that the  
514 franchisee's claim is intentionally false, fraudulent, or misrepresented.

515 (9) (a) Any charge backs for warranty parts or service compensation and service  
516 incentives shall only be enforceable for the six-month period immediately following the date  
517 the payment for warranty reimbursement was made by the franchisor.

518 (b) Except as provided in Subsection [~~(9)(c)~~] (9)(e), all charge backs levied by a  
519 franchisor for sales compensation or sales incentives arising out of the sale or lease of a motor  
520 vehicle sold or leased by a franchisee shall be compensable only if written notice of the charge  
521 back is received by the franchisee within six months immediately following the sooner of:

522 (i) the date when the sales incentive program terminates; or

523 (ii) the date when payment for the sales compensation or sales incentive was made by  
524 the franchisor to the franchisee.

525 (c) (i) Upon an audit, the franchisor shall provide the franchisee automated or written  
526 notice explaining the amount of and reason for a charge back.

527 (ii) A franchisee may respond in writing within 30 days after the notice under  
528 Subsection (9)(c)(i) to:

529 (A) explain a deficiency; or

530 (B) provide materials or information to correct and cure compliance with a provision  
531 that is a basis for a charge back.

532 (d) A charge back:

533 (i) may not be based on a nonmaterial error that is clerical in nature; and

534 (ii) (A) shall be based on one or more specific instances of material noncompliance  
535 with the franchisor's warranty compensation program or sales incentive program; and

536 (B) may not be extrapolated from a sampling of warranty claims or sales incentive  
537 claims.

538 (e) The time limitations of this Subsection (9) do not preclude charge backs for any  
539 fraudulent claim that was previously paid.

540 Section 11. Section 13-49-201 is amended to read:

541 **13-49-201. Requirement to be registered as an immigration consultant --**

542 **Exemptions.**

543 (1) (a) Except as provided in Subsection (1)(b), an individual may not engage in an  
544 activity of an immigration consultant for compensation unless the individual is registered under  
545 this chapter.

546 (b) Except for Subsections 13-49-303(3) and (4), this chapter does not apply to an  
547 individual authorized:

548 (i) to practice law in this state; or

549 (ii) by federal law to represent [~~persons~~] an individual before the Board of Immigration  
550 Appeals or the United States Citizenship and Immigration Services.

551 (2) An immigration consultant may only offer nonlegal assistance or advice in an  
552 immigration matter.

553 Section 12. Section 13-49-203 is amended to read:

554 **13-49-203. Requirement to submit to criminal background check.**

555 (1) The division shall require an applicant for registration as an immigration consultant  
556 to:

557 (a) submit a fingerprint card in a form acceptable to the division; and

558 (b) consent to a fingerprint criminal background check by the Utah Bureau of Criminal  
559 Identification.

560 (2) (a) The division shall obtain information from a criminal history record maintained  
561 by the Utah Bureau of Criminal Identification pursuant to Title 53, Chapter 10, Part 2, Bureau

562 of Criminal Identification.

563 (b) The information obtained under Subsection (2)~~(b)~~(a) may only be used by the  
564 division to determine whether an applicant for registration as an immigration consultant meets  
565 the requirements of Subsection 13-49-202(1)(c).

566 Section 13. Section 17B-1-502 is amended to read:

567 **17B-1-502. Withdrawal of area from local district -- Automatic withdrawal in**  
568 **certain circumstances.**

569 (1) (a) An area within the boundaries of a local district may be withdrawn from the  
570 local district only as provided in this part or, if applicable, as provided in Chapter 2a, Part 11,  
571 Municipal Services District Act.

572 (b) Except as provided in Subsections (2) and (3), the inclusion of an area of a local  
573 district within a municipality because of a municipal incorporation under Title 10, Chapter 2a,  
574 Municipal Incorporation, or a municipal annexation or boundary adjustment under Title 10,  
575 Chapter 2, Part 4, Annexation, does not affect the requirements under this part for the process  
576 of withdrawing that area from the local district.

577 (2) (a) An area within the boundaries of a local district is automatically withdrawn  
578 from the local district by the annexation of the area to a municipality or the adding of the area  
579 to a municipality by boundary adjustment under Title 10, Chapter 2, Part 4, Annexation, if:

580 (i) the local district provides:

581 (A) fire protection, paramedic, and emergency services; or

582 (B) law enforcement service;

583 (ii) an election for the creation of the local district was not required because of

584 Subsection 17B-1-214(3)(d); and

585 (iii) before annexation or boundary adjustment, the boundaries of the local district do  
586 not include any of the annexing municipality.

587 (b) The effective date of a withdrawal under this Subsection (2) is governed by

588 Subsection 17B-1-512(2)(b).

589 (3) (a) Except as provided in Subsection (3)(c) or (d), an area within the boundaries of

590 a local district located in a county of the first class is automatically withdrawn from the local  
591 district by the incorporation of a municipality whose boundaries include the area if:

592 (i) the local district provides:

593 (A) fire protection, paramedic, and emergency services;

594 (B) law enforcement service; or

595 (C) municipal services, as defined in Section 17B-2a-1102;

596 (ii) an election for the creation of the local district was not required because of

597 Subsection 17B-1-214(3)(d) or (g); and

598 (iii) the legislative body of the newly incorporated municipality:

599 (A) for a city or town incorporated under Title 10, Chapter 2a, Part 4, Incorporation of  
600 Metro Townships and Unincorporated Islands in a County of the First Class on and after May  
601 12, 2015, complies with the feasibility study requirements of Section 17B-2a-1110;

602 (B) adopts a resolution no later than 180 days after the effective date of incorporation  
603 approving the withdrawal that includes the legal description of the area to be withdrawn; and

604 (C) delivers a copy of the resolution to the board of trustees of the local district.

605 (b) The effective date of a withdrawal under this Subsection (3) is governed by

606 Subsection 17B-1-512(2)(a).

607 (c) Section 17B-1-505 shall govern the withdrawal of an incorporated area within a  
608 county of the first class after the expiration of the 180-day period described in Subsection  
609 (3)(a)(iii)(B) if:

610 (i) the local district from which the area is withdrawn provides:

611 (A) fire protection, paramedic, and emergency services;

612 (B) law enforcement service; or

613 (C) municipal services, as defined in Section 17B-2a-1102; and

614 (ii) an election for the creation of the local district was not required under Subsection

615 17B-1-214(3)(d) or (g).

616 (d) An area within the boundaries of a local district that is incorporated as a metro  
617 township and for which the residents of the metro township at an election to incorporate chose

618 to be included in a municipal services district is not subject to the provisions of this Subsection  
619 (3).

620 Section 14. Section **19-1-301.5** is amended to read:

621 **19-1-301.5. Permit review adjudicative proceedings.**

622 (1) As used in this section:

623 (a) "Dispositive action" means a final agency action that:

624 (i) the executive director takes as part of a special adjudicative proceeding; and

625 (ii) is subject to judicial review, in accordance with Subsection (15).

626 (b) "Dispositive motion" means a motion that is equivalent to:

627 (i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);

628 (ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule  
629 12(c); or

630 (iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.

631 (c) "Financial assurance determination" means a decision on whether a facility, site,  
632 plan, party, broker, owner, operator, generator, or permittee has met financial assurance or  
633 financial responsibility requirements as determined by the director of the Division of Waste  
634 Management and Radiation Control.

635 (d) "Party" means:

636 (i) the director who issued the permit order or financial assurance determination that is  
637 being challenged in the special adjudicative proceeding under this section;

638 (ii) the permittee;

639 (iii) the person who applied for the permit, if the permit was denied;

640 (iv) the person who is subject to a financial assurance determination; or

641 (v) a person granted intervention by the administrative law judge.

642 (e) "Permit" means any of the following issued under this title:

643 (i) a permit;

644 (ii) a plan;

645 (iii) a license;

- 646 (iv) an approval order; or
- 647 (v) another administrative authorization made by a director.
- 648 (f) (i) "Permit order" means an order issued by a director that:
- 649 (A) approves a permit;
- 650 (B) renews a permit;
- 651 (C) denies a permit;
- 652 (D) modifies or amends a permit; or
- 653 (E) revokes and reissues a permit.
- 654 (ii) "Permit order" does not include an order terminating a permit.
- 655 (g) "Special adjudicative proceeding" means a proceeding under this section to resolve
- 656 a challenge to a:
  - 657 (i) permit order; or
  - 658 (ii) financial assurance determination.
- 659 (2) This section governs [~~permit~~] special adjudicative proceedings.
- 660 (3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4,
- 661 Administrative Procedures Act, do not apply to a special adjudicative proceeding under this
- 662 section.
- 663 (4) If a public comment period was provided during the permit application process or
- 664 the financial assurance determination process, a person who challenges an order, application, or
- 665 determination may only raise an issue or argument during the special adjudicative proceeding
- 666 that:
  - 667 (a) the person raised during the public comment period; and
  - 668 (b) was supported with information or documentation that is cited with reasonable
  - 669 specificity and sufficiently enables the director to fully consider the substance and significance
  - 670 of the issue.
- 671 (5) (a) Upon request by a party, the executive director shall issue a notice of
- 672 appointment appointing an administrative law judge, in accordance with Subsections
- 673 [19-1-301](#)(5) and (6), to conduct a special adjudicative proceeding under this section.

674 (b) The executive director shall issue a notice of appointment within 30 days after the  
675 day on which a party files a request.

676 (c) A notice of appointment shall include:

677 (i) the agency's file number or other reference number assigned to the special  
678 adjudicative proceeding;

679 (ii) the name of the special adjudicative proceeding; and

680 (iii) the administrative law judge's name, title, mailing address, email address, and  
681 telephone number.

682 (6) (a) Only the following may file a petition for review of a permit order or financial  
683 assurance determination:

684 (i) a party; or

685 (ii) a person who is seeking to intervene under Subsection (7).

686 (b) A person who files a petition for review of a permit order or a financial assurance  
687 determination shall file the petition for review within 30 days after the day on which the permit  
688 order or the financial assurance determination is issued.

689 (c) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative  
690 Rulemaking Act, make rules allowing the extension of the filing deadline described in  
691 Subsection (6)(b).

692 (d) A petition for review shall:

693 (i) be served in accordance with department rule;

694 (ii) include the name and address of each person to whom a copy of the petition for  
695 review is sent;

696 (iii) if known, include the agency's file number or other reference number assigned to  
697 the special adjudicative proceeding;

698 (iv) state the date on which the petition for review is served;

699 (v) include a statement of the petitioner's position, including, as applicable:

700 (A) the legal authority under which the petition for review is requested;

701 (B) the legal authority under which the agency has jurisdiction to review the petition

702 for review;

703 (C) each of the petitioner's arguments in support of the petitioner's requested relief;

704 (D) an explanation of how each argument described in Subsection (6)(d)(v)(C) was  
705 preserved;

706 (E) a detailed description of any permit condition to which the petitioner is objecting;

707 (F) any modification or addition to a permit that the petitioner is requesting;

708 (G) a demonstration that the agency's permit decision is based on a finding of fact or  
709 conclusion of law that is clearly erroneous;

710 (H) if the agency director addressed a finding of fact or conclusion of law described in  
711 Subsection (6)(d)(v)(G) in a response to public comment, a citation to the comment and  
712 response that relates to the finding of fact or conclusion of law and an explanation of why the  
713 director's response was clearly erroneous or otherwise warrants review; and

714 (I) a claim for relief.

715 (e) A person may not raise an issue or argument in a petition for review unless the  
716 issue or argument:

717 (i) was preserved in accordance with Subsection (4); or

718 (ii) was not reasonably ascertainable before or during the public comment period.

719 (f) To demonstrate that an issue or argument was preserved in accordance with  
720 Subsection (4), a petitioner shall include the following in the petitioner's petition for review:

721 (i) a citation to where the petitioner raised the issue or argument during the public  
722 comment period; and

723 (ii) for each document upon which the petitioner relies in support of an issue or  
724 argument, a description that:

725 (A) states why the document is part of the administrative record; and

726 (B) demonstrates that the petitioner cited the document with reasonable specificity in  
727 accordance with Subsection (4)(b).

728 (7) (a) A person who is not a party may not participate in a special adjudicative  
729 proceeding under this section unless the person is granted the right to intervene under this

730 Subsection (7).

731 (b) A person who seeks to intervene in a special adjudicative proceeding under this  
732 section shall, within 30 days after the day on which the permit order or the financial assurance  
733 determination being challenged was issued, file:

734 (i) a petition to intervene that:

735 (A) meets the requirements of Subsection 63G-4-207(1); and

736 (B) demonstrates that the person is entitled to intervention under Subsection (7)(d)(ii);

737 and

738 (ii) a timely petition for review.

739 (c) In a special adjudicative proceeding to review a permit order, the permittee is a  
740 party to the special adjudicative proceeding regardless of who files the petition for review and  
741 does not need to file a petition to intervene under Subsection (7)(b).

742 (d) An administrative law judge shall grant a petition to intervene in a special  
743 adjudicative proceeding, if:

744 (i) the petition to intervene is timely filed; and

745 (ii) the petitioner:

746 (A) demonstrates that the petitioner's legal interests may be substantially affected by  
747 the special adjudicative proceeding;

748 (B) demonstrates that the interests of justice and the orderly and prompt conduct of the  
749 special adjudicative proceeding will not be materially impaired by allowing the intervention;

750 and

751 (C) in the petitioner's petition for review, raises issues or arguments that are preserved  
752 in accordance with Subsection (4).

753 (e) An administrative law judge:

754 (i) shall issue an order granting or denying a petition to intervene in accordance with  
755 Subsection 63G-4-207(3)(a); and

756 (ii) may impose conditions on intervenors as described in Subsections 63G-4-207(3)(b)  
757 and (c).

758 (f) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative  
759 Rulemaking Act, make rules allowing the extension of the filing deadline described in  
760 Subsection (7)(b).

761 (8) (a) Unless the parties otherwise agree, the schedule for a special adjudicative  
762 proceeding is as follows:

763 (i) the director shall file and serve the administrative record within 40 days after the  
764 day on which the executive director issues a notice of appointment, unless otherwise ordered  
765 by the administrative law judge;

766 (ii) any dispositive motion shall be filed and served within 15 days after the day on  
767 which the administrative record is filed and served;

768 (iii) the petitioner shall file and serve an opening brief of no more than 30 pages:

769 (A) within 30 days after the day on which the director files and serves the  
770 administrative record; or

771 (B) if a party files and serves a dispositive motion, within 30 days after the day on  
772 which the administrative law judge issues a decision on the dispositive motion, including a  
773 decision to defer the motion;

774 (iv) each party shall file and serve a response brief of no more than 15 pages within 15  
775 days after the day on which the petitioner files and serves the opening brief;

776 (v) the petitioner may file and serve a reply brief of not more than 15 pages within 15  
777 days after the day on which the response brief is filed and served; and

778 (vi) if the petitioner files and serves a reply brief, each party may file and serve a  
779 surreply brief of no more than five pages within five business days after the day on which the  
780 petitioner files and serves the reply brief.

781 (b) (i) A reply brief may not raise an issue that was not raised in the response brief.

782 (ii) A surreply brief may not raise an issue that was not raised in the reply brief.

783 (9) (a) An administrative law judge shall conduct a special adjudicative proceeding  
784 based only on the administrative record and not as a trial de novo.

785 (b) To the extent relative to the issues and arguments raised in the petition for review,

786 the administrative record consists of the following items, if they exist:

787 (i) (A) for review of a permit order, the permit application, draft permit, and final  
788 permit; or

789 (B) for review of a financial assurance determination, the proposed financial assurance  
790 determination from the owner or operator of the facility, the draft financial assurance  
791 determination, and the final financial assurance determination;

792 (ii) each statement of basis, fact sheet, engineering review, or other substantive  
793 explanation designated by the director as part of the basis for the decision relating to the permit  
794 order or the financial assurance determination;

795 (iii) the notice and record of each public comment period;

796 (iv) the notice and record of each public hearing, including oral comments made during  
797 the public hearing;

798 (v) written comments submitted during the public comment period;

799 (vi) responses to comments that are designated by the director as part of the basis for  
800 the decision relating to the permit order or the financial assurance determination;

801 (vii) any information that is:

802 (A) requested by and submitted to the director; and

803 (B) designated by the director as part of the basis for the decision relating to the permit  
804 order or the financial assurance determination;

805 (viii) any additional information specified by rule;

806 (ix) any additional documents agreed to by the parties; and

807 (x) information supplementing the record under Subsection (9)(c).

808 (c) (i) There is a rebuttable presumption against supplementing the record.

809 (ii) A party may move to supplement the record described in Subsection (9)(b) with  
810 technical or factual information.

811 (iii) The administrative law judge may grant a motion to supplement the record  
812 described in Subsection (9)(b) with technical or factual information if the moving party proves  
813 that:

- 814 (A) good cause exists for supplementing the record;
- 815 (B) supplementing the record is in the interest of justice; and
- 816 (C) supplementing the record is necessary for resolution of the issues.
- 817 (iv) The department may, in accordance with Title 63G, Chapter 3, Utah
- 818 Administrative Rulemaking Act, make rules permitting further supplementation of the record.
- 819 (10) (a) Except as otherwise provided by this section, the administrative law judge shall
- 820 review and respond to a petition for review in accordance with Subsections [63G-4-201\(3\)\(d\)](#)
- 821 and (e), following the relevant procedures for formal adjudicative proceedings.
- 822 (b) The administrative law judge shall require the parties to file responsive briefs in
- 823 accordance with Subsection (8).
- 824 (c) If an administrative law judge enters an order of default against a party, the
- 825 administrative law judge shall enter the order of default in accordance with Section [63G-4-209](#).
- 826 (d) The administrative law judge, in conducting a special adjudicative proceeding:
- 827 (i) may not participate in an ex parte communication with a party to the special
- 828 adjudicative proceeding regarding the merits of the special adjudicative proceeding unless
- 829 notice and an opportunity to be heard are afforded to all parties; and
- 830 (ii) shall, upon receiving an ex parte communication, place the communication in the
- 831 public record of the proceeding and afford all parties an opportunity to comment on the
- 832 information.
- 833 (e) In conducting a special adjudicative proceeding, the administrative law judge may
- 834 take judicial notice of matters not in the administrative record, in accordance with Utah Rules
- 835 of Evidence, Rule 201.
- 836 (f) An administrative law judge may take any action in a special adjudicative
- 837 proceeding that is not a dispositive action.
- 838 (11) (a) A person who files a petition for review has the burden of demonstrating that
- 839 an issue or argument raised in the petition for review has been preserved in accordance with
- 840 Subsection (4).
- 841 (b) The administrative law judge shall dismiss, with prejudice, any issue or argument

842 raised in a petition for review that has not been preserved in accordance with Subsection (4).

843 (12) In response to a dispositive motion, within 45 days after the day on which oral  
844 argument takes place, or, if there is no oral argument, within 45 days after the day on which the  
845 reply brief on the dispositive motion is due, the administrative law judge shall:

846 (a) submit a proposed dispositive action to the executive director recommending full or  
847 partial resolution of the special adjudicative proceeding, that includes:

- 848 (i) written findings of fact;
- 849 (ii) written conclusions of law; and
- 850 (iii) a recommended order; or

851 (b) if the administrative law judge determines that a full or partial resolution of the  
852 special adjudicative proceeding is not appropriate, issue an order that explains the basis for the  
853 administrative law judge's determination.

854 (13) For each issue or argument that is not dismissed or otherwise resolved under  
855 Subsection (11)(b) or (12), the administrative law judge shall:

856 (a) provide the parties an opportunity for briefing and oral argument in accordance with  
857 this section;

858 (b) conduct a review of the director's order or determination, based on the record  
859 described in Subsections (9)(b), (9)(c), and (10)(e); and

860 (c) within 60 days after the day on which the reply brief on the dispositive motion is  
861 due, submit to the executive director a proposed dispositive action, that includes:

- 862 (i) written findings of fact;
- 863 (ii) written conclusions of law; and
- 864 (iii) a recommended order.

865 (14) (a) When the administrative law judge submits a proposed dispositive action to  
866 the executive director, the executive director may:

- 867 (i) adopt, adopt with modifications, or reject the proposed dispositive action; or
- 868 (ii) return the proposed dispositive action to the administrative law judge for further  
869 action as directed.

870 (b) On review of a proposed dispositive action, the executive director shall uphold all  
871 factual, technical, and scientific agency determinations that are not clearly erroneous based on  
872 the petitioner's marshaling of the evidence.

873 (c) In reviewing a proposed dispositive action during a special adjudicative proceeding,  
874 the executive director may take judicial notice of matters not in the record, in accordance with  
875 Utah Rules of Evidence, Rule 201.

876 (d) The executive director may use the executive director's technical expertise in  
877 making a determination.

878 (15) (a) A party may seek judicial review in the Utah Court of Appeals of a dispositive  
879 action in a special adjudicative proceeding, in accordance with Sections [63G-4-401](#),  
880 [63G-4-403](#), and [63G-4-405](#).

881 (b) An appellate court shall limit its review of a dispositive action of a special  
882 adjudicative proceeding under this section to:

883 (i) the record described in Subsections (9)(b), (9)(c), (10)(e), and (14)(c); and

884 (ii) the record made by the administrative law judge and the executive director during  
885 the special adjudicative proceeding.

886 (c) During judicial review of a dispositive action, the appellate court shall:

887 (i) review all agency determinations in accordance with Subsection [63G-4-403\(4\)](#),  
888 recognizing that the agency has been granted substantial discretion to interpret its governing  
889 statutes and rules; and

890 (ii) uphold all factual, technical, and scientific agency determinations that are not  
891 clearly erroneous based upon the petitioner's marshaling of the evidence.

892 (16) (a) The filing of a petition for review does not:

893 (i) stay a permit order or a financial assurance determination; or

894 (ii) delay the effective date of a permit order or a portion of a financial assurance  
895 determination.

896 (b) A permit order or a financial assurance determination may not be stayed or delayed  
897 unless a stay is granted under this Subsection (16).

898 (c) The administrative law judge shall:  
899 (i) consider a party's motion to stay a permit order or a financial assurance  
900 determination during a special adjudicative proceeding; and  
901 (ii) within 45 days after the day on which the reply brief on the motion to stay is due,  
902 submit a proposed determination on the stay to the executive director.

903 (d) The administrative law judge may not recommend to the executive director a stay  
904 of a permit order or a financial assurance determination, or a portion of a permit order or a  
905 portion of a financial assurance determination, unless:

- 906 (i) all parties agree to the stay; or
- 907 (ii) the party seeking the stay demonstrates that:
  - 908 (A) the party seeking the stay will suffer irreparable harm unless the stay is issued;
  - 909 (B) the threatened injury to the party seeking the stay outweighs whatever damage the  
910 proposed stay is likely to cause the party restrained or enjoined;
  - 911 (C) the stay, if issued, would not be adverse to the public interest; and
  - 912 (D) there is a substantial likelihood that the party seeking the stay will prevail on the  
913 merits of the underlying claim, or the case presents serious issues on the merits, which should  
914 be the subject of further adjudication.

915 (e) A party may appeal the executive director's decision regarding a stay of a permit  
916 order or a financial assurance determination to the Utah Court of Appeals, in accordance with  
917 Section [78A-4-103](#).

918 (17) (a) Subject to Subsection (17)(c), the administrative law judge shall issue a written  
919 response to a non-dispositive motion within 45 days after the day on which the reply brief on  
920 the non-dispositive motion is due or, if the administrative law judge grants oral argument on  
921 the non-dispositive motion, within 45 days after the day on which oral argument takes place.

922 (b) If the administrative law judge determines that the administrative law judge needs  
923 more time to issue a response to a non-dispositive motion, the administrative law judge may  
924 issue a response after the deadline described in Subsection (17)(a) if, before the deadline  
925 expires, the administrative law judge gives notice to the parties that includes:

- 926 (i) the amount of additional time that the administrative law judge requires; and
- 927 (ii) the reason the administrative law judge needs the additional time.
- 928 (c) If the administrative law judge grants oral argument on a non-dispositive motion,
- 929 the administrative law judge shall hold the oral argument within 30 days after the day on which
- 930 the reply brief on the non-dispositive motion is due.

931 Section 15. Section **20A-1-306** is amended to read:

932 **20A-1-306. Electronic signatures prohibited.**

933 Notwithstanding Title 46, Chapter 4, Uniform Electronic Transactions Act, and

934 Subsections 68-3-12(1)(e) and 68-3-12.5[(26)](27) and [(35)] (38), an electronic signature may

935 not be used to sign a petition to:

- 936 (1) qualify a ballot proposition for the ballot under Chapter 7, Issues Submitted to the
- 937 Voters;
- 938 (2) organize and register a political party under Chapter 8, Political Party Formation
- 939 and Procedures; or
- 940 (3) qualify a candidate for the ballot under Chapter 9, Candidate Qualifications and
- 941 Nominating Procedures.

942 Section 16. Section **20A-7-702** is amended to read:

943 **20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.**

- 944 (1) The lieutenant governor shall ensure that all information submitted for publication
- 945 in the voter information pamphlet is:
- 946 (a) printed and bound in a single pamphlet;
  - 947 (b) printed in clear readable type, no less than 10 point, except that the text of any
  - 948 measure may be set forth in eight-point type; and
  - 949 (c) printed on a quality and weight of paper that best serves the voters.
- 950 (2) The voter information pamphlet shall contain the following items in this order:
- 951 (a) a cover title page;
  - 952 (b) an introduction to the pamphlet by the lieutenant governor;
  - 953 (c) a table of contents;

- 954 (d) a list of all candidates for constitutional offices;
- 955 (e) a list of candidates for each legislative district;
- 956 (f) a 100-word statement of qualifications for each candidate for the office of governor,  
957 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the  
958 candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before  
959 the date of the election;
- 960 (g) information pertaining to all measures to be submitted to the voters, beginning a  
961 new page for each measure and containing, in the following order for each measure:
- 962 (i) a copy of the number and ballot title of the measure;
- 963 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by  
964 the Legislature or by referendum;
- 965 (iii) the impartial analysis of the measure prepared by the Office of Legislative  
966 Research and General Counsel;
- 967 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the  
968 measure, the arguments against the measure, and the rebuttal to the arguments against the  
969 measure, with the name and title of the authors at the end of each argument or rebuttal;
- 970 (v) for each constitutional amendment, a complete copy of the text of the constitutional  
971 amendment, with all new language underlined, and all deleted language placed within brackets;
- 972 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the  
973 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section  
974 [20A-7-202.5](#); and
- 975 (vii) for each referendum qualified for the ballot, a complete copy of the text of the law  
976 being submitted to the voters for their approval or rejection, with all new language underlined  
977 and all deleted language placed within brackets, as applicable;
- 978 (h) a description provided by the Judicial Performance Evaluation Commission of the  
979 selection and retention process for judges, including, in the following order:
- 980 (i) a description of the judicial selection process;
- 981 (ii) a description of the judicial performance evaluation process;

- 982 (iii) a description of the judicial retention election process;
- 983 (iv) a list of the criteria of the judicial performance evaluation and the minimum  
984 performance standards;
- 985 (v) the names of the judges standing for retention election; and
- 986 (vi) for each judge:
  - 987 (A) a list of the counties in which the judge is subject to retention election;
  - 988 (B) a short biography of professional qualifications and a recent photograph;
  - 989 (C) a narrative concerning the judge's performance;
  - 990 (D) for each standard of performance, a statement identifying whether or not the judge  
991 met the standard and, if not, the manner in which the judge failed to meet the standard;
  - 992 (E) a statement identifying whether or not the Judicial Performance Evaluation  
993 Commission recommends the judge be retained or declines to make a recommendation and the  
994 number of votes for and against the commission's recommendation;
  - 995 (F) any statement provided by a judge who is not recommended for retention by the  
996 Judicial Performance Evaluation Commission under Section [78A-12-203](#);
  - 997 (G) in a bar graph, the average of responses to each survey category, displayed with an  
998 identification of the minimum acceptable score as set by Section [78A-12-205](#) and the average  
999 score of all judges of the same court level; and
  - 1000 (H) a website address that contains the Judicial Performance Evaluation Commission's  
1001 report on the judge's performance evaluation;
  - 1002 (i) for each judge, a statement provided by the Utah Supreme Court identifying the  
1003 cumulative number of informal reprimands, when consented to by the judge in accordance with  
1004 Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of  
1005 censure and suspension issued by the Utah Supreme Court under Utah Constitution, Article  
1006 VIII, Section 13, during the judge's current term and the immediately preceding term, and a  
1007 detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct  
1008 that the judge has received;
  - 1009 (j) an explanation of ballot marking procedures prepared by the lieutenant governor,

1010 indicating the ballot marking procedure used by each county and explaining how to mark the  
1011 ballot for each procedure;

1012 (k) voter registration information, including information on how to obtain an absentee  
1013 ballot;

1014 (l) a list of all county clerks' offices and phone numbers; and

1015 (m) on the back cover page, a printed copy of the following statement signed by the  
1016 lieutenant governor:

1017 "I, \_\_\_\_\_ (print name), Lieutenant Governor of Utah, certify that the  
1018 measures contained in this pamphlet will be submitted to the voters of Utah at the election to  
1019 be held throughout the state on \_\_\_\_ (date of election), and that this pamphlet is complete and  
1020 correct according to law.

1021 SEAL

1022 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this \_\_\_\_ day  
1023 of \_\_\_\_ (month), \_\_\_\_ (year)

1024 (signed) \_\_\_\_\_  
1025 Lieutenant Governor"

1026 (3) No earlier than 75 days, and no later than 15 days, before the day on which voting  
1027 commences, the lieutenant governor shall:

1028 (a) (i) distribute one copy of the voter information pamphlet to each household within  
1029 the state;

1030 (ii) distribute to each household within the state a notice:

1031 (A) printed on a postage prepaid, preaddressed return form that a person may use to  
1032 request delivery of a voter information pamphlet by mail;

1033 (B) that states the address of the Statewide Electronic Voter Information Website  
1034 authorized by Section [20A-7-801](#); and

1035 (C) that states the phone number a voter may call to request delivery of a voter  
1036 information pamphlet by mail; or

1037 (iii) ensure that one copy of the voter information pamphlet is placed in one issue of

1038 every newspaper of general circulation in the state;

1039 (b) ensure that a sufficient number of printed voter information pamphlets are available  
1040 for distribution as required by this section;

1041 (c) provide voter information pamphlets to each county clerk for free distribution upon  
1042 request and for placement at polling places; and

1043 (d) ensure that the distribution of the voter information pamphlets is completed 15 days  
1044 before the election.

1045 (4) The lieutenant governor may distribute a voter information pamphlet at a location  
1046 frequented by a person who cannot easily access the Statewide Electronic Voter Information  
1047 Website authorized by Section 20A-7-801.

1048 ~~[(5) The lieutenant governor shall:]~~

1049 ~~[(a) conduct a study to evaluate the effectiveness of the notice authorized by this  
1050 section; and]~~

1051 ~~[(b) provide the results of a study described in Subsection (5)(a) to the Government  
1052 Operations Interim Committee by October 1, 2013.]~~

1053 Section 17. Section 26-37a-102 is amended to read:

1054 **26-37a-102. Definitions.**

1055 As used in this chapter:

1056 (1) "Ambulance service provider" means:

1057 (a) an ambulance provider as defined in Section 26-8a-102; or

1058 (b) a non-911 service provider as defined in Section 26-8a-102.

1059 (2) "Assessment" means the Medicaid ambulance service provider assessment  
1060 established by this chapter.

1061 (3) "Division" means the Division of Health Care Financing within the department.

1062 (4) "Non-federal portion" means the non-federal share the division needs to seed  
1063 amounts that will support fee-for-service ambulance service provider rates, as described in  
1064 Section 26-37a-105.

1065 (5) "Total transports" means the number of total ambulance transports applicable to a

1066 given fiscal year, as determined under Subsection 26-37a-104(5).

1067 Section 18. Section 31A-22-619.6 is amended to read:

1068 **31A-22-619.6. Coordination of benefits with workers' compensation claim --**

1069 **Health insurer's duty to pay.**

1070 (1) As used in this section:

1071 (a) "Employee" means an employee, worker, or operative as defined in Section

1072 34A-2-104.

1073 (b) "Employer" is as enumerated and defined in Section 34A-2-103.

1074 (c) "Health benefit plan":

1075 (i) means the same as that term is [as] defined in Section 31A-1-301;

1076 (ii) includes:

1077 (A) a health maintenance organization;

1078 (B) a third party administrator that offers, sells, manages, or administers a health

1079 benefit plan; and

1080 (C) the Public Employees' Benefit and Insurance Program created in Section

1081 49-20-103; and

1082 (iii) excludes a health benefit plan offered by an insurer that has a market share in the

1083 state's fully insured market that is less than 2%, as determined in the department's annual

1084 Market Share Report published by the department.

1085 (d) "Workers' compensation carrier" means any of the entities an employer may use to

1086 provide workers' compensation benefits for its employees under Section 34A-2-201.

1087 (e) "Workers' compensation claim" means a claim for compensation for medical

1088 benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3,

1089 Utah Occupational Disease Act.

1090 (2) (a) For medical claims incurred on or after July 1, 2014, an employee's health

1091 benefit plan may not delay or deny payment of benefits due to the employee under the terms of

1092 a health benefit plan by claiming that treatment for the employee's injury or disease is the

1093 responsibility of the employer's workers' compensation carrier if:

1094 (i) the employee or a health care provider on behalf of an employee files an application  
1095 for hearing regarding the workers' compensation claim with the Division of Adjudication under  
1096 Section [34A-2-801](#); and

1097 (ii) the health benefit plan received a notice from the Labor Commission that an  
1098 application for hearing was filed in accordance with Subsection (2)(a)(i).

1099 (b) The Labor Commission shall provide the notice required by Subsection (2)(a)(ii) in  
1100 accordance with Subsection [34A-2-213](#)(2).

1101 (3) A health benefit plan that receives a medical claim from the employee or a health  
1102 care provider and a notice from the Labor Commission in accordance with Subsection (2):

1103 (a) shall pay the medical claim directly to the health care provider in the dollar amount  
1104 paid under the limits, terms, and conditions of the employee's health benefit plan; and

1105 (b) may send a notice to the Labor Commission or the attorney for the injured worker  
1106 informing the parties that the health benefit plan paid a claim under the provisions of this  
1107 section.

1108 (4) If the claims for medical services paid pursuant to Subsection (3) are determined to  
1109 be compensable by the workers' compensation carrier in a final order under Section [34A-2-801](#)  
1110 or under the terms of a settlement agreement under Section [~~34A-2-801~~] [34A-2-420](#), the  
1111 workers' compensation carrier shall pay the health benefit plan and employee in accordance  
1112 with Subsection [34A-2-213](#)(3)(b).

1113 (5) (a) A health care provider who receives payment for a medical claim from a health  
1114 benefit plan under the provisions of Subsection (3) may not request additional payment for the  
1115 medical claim from the workers' compensation carrier if the final order under Section  
1116 [34A-2-801](#) or terms of the settlement agreement under Section [~~34A-2-801~~] [34A-2-420](#)  
1117 determine that the medical claim was compensable by the workers' compensation carrier.

1118 (b) A health benefit plan that is reimbursed under the provisions of Subsection  
1119 [34A-2-213](#)(3) for a medical claim may not seek reimbursement or autorecovery from the health  
1120 care provider for any difference between the amount of the claim paid by the health benefit  
1121 plan and the reimbursement to the health benefit plan by the workers' compensation carrier

1122 under Subsection [34A-2-213\(3\)](#).

1123 (c) If a final order of the Labor Commission under Section [34A-2-801](#) or the terms of a  
1124 settlement agreement under Section [~~34A-2-801~~] [34A-2-420](#) determines that a medical claim is  
1125 compensable by the workers' compensation carrier, the workers' compensation carrier may not  
1126 seek reimbursement or autorecovery from a health care provider for any part of the medical  
1127 claim that is the responsibility of the workers' compensation carrier under the order or  
1128 settlement agreement.

1129 (6) This section sunsets in accordance with Section [63I-1-231](#).

1130 Section 19. Section **31A-33-106** is amended to read:

1131 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

1132 (1) There is created a board of directors of the Workers' Compensation Fund.

1133 (2) The board shall consist of seven directors.

1134 (3) One director shall be the chief executive officer of the fund.

1135 (4) (a) In accordance with a plan that meets the requirements of this section and the  
1136 fund's articles of incorporation and bylaws, the board shall nominate and the policyholders  
1137 shall elect six public directors as follows:

1138 (i) four directors who are owners, officers, or employees of policyholders, each of  
1139 whom is an owner, officer, or employee of a policyholder that has been insured by the Workers'  
1140 Compensation Fund for at least one year before the election of the director representing the  
1141 policyholder; and

1142 (ii) two directors from the public in general.

1143 (b) The plan described in Subsection (4)(a) shall comply with Section [31A-5-409](#) to the  
1144 extent that Section [31A-5-409](#) does not conflict with this section.

1145 (5) No two directors may represent or be employed by the same policyholder.

1146 (6) At least five directors elected by the policyholders shall have had previous  
1147 experience in:

1148 (a) the actuarial profession;

1149 (b) accounting;

- 1150 (c) investments;
- 1151 (d) risk management;
- 1152 (e) occupational safety;
- 1153 (f) casualty insurance; or
- 1154 (g) the legal profession.

1155 (7) A director who represents a policyholder that fails to maintain workers'  
1156 compensation insurance through the Workers' Compensation Fund shall immediately resign  
1157 from the board.

1158 (8) A person may not be a director if that person:

- 1159 (a) has any interest as a stockholder, employee, attorney, or contractor of a competing  
1160 insurance carrier providing workers' compensation insurance in Utah;
- 1161 (b) fails to meet or comply with the conflict of interest policies established by the  
1162 board; or
- 1163 (c) is not bondable.

1164 (9) After notice and a hearing, the board may remove any director for cause which  
1165 includes:

- 1166 (a) neglect of duty; or
- 1167 (b) malfeasance.

1168 (10) (a) Except as required by Subsection (10)(b), the term of office of the directors  
1169 elected by the policyholders shall be four years, beginning July 1 of the year of [appointment]  
1170 election.

1171 (b) Notwithstanding the requirements of Subsection (10)(a), the board shall, at the time  
1172 of election or reelection, adjust the length of terms to ensure that no more than two terms  
1173 expire in a calendar year.

1174 (11) A director shall hold office until the director's successor is selected and qualified.

1175 (12) When a vacancy occurs in the membership of the board for any reason, the  
1176 replacement shall be appointed by a majority of the board for the unexpired term, after which  
1177 time the replacement shall stand for policyholder election as described in the fund's articles of

1178 incorporation and bylaws.

1179 (13) The board shall annually elect a chair and other officers as needed from its  
1180 membership.

1181 (14) (a) The board shall meet at least quarterly at a time and place designated by the  
1182 chair.

1183 (b) The chair:

1184 (i) may call board meetings more frequently than quarterly; and

1185 (ii) shall call additional board meetings if requested to do so by a majority of the board.

1186 (15) Four directors are a quorum for the purpose of transacting all business of the  
1187 board.

1188 (16) Each decision of the board requires the affirmative vote of at least four directors  
1189 for approval.

1190 (17) (a) (i) A director may receive compensation and be reimbursed for reasonable  
1191 expenses incurred in the performance of the director's official duties:

1192 (A) as determined by the board of directors; and

1193 (B) if the aggregate of compensation paid to all directors of the Workers'

1194 Compensation Fund in a calendar year is less than or equal to the amount described in

1195 Subsection (17)(a)(ii).

1196 (ii) (A) For the period beginning January 1, 2016, and ending December 31, 2016, the  
1197 amount described in Subsection (17)(a)(i)(B) is \$150,000.

1198 (B) For calendar years beginning on or after January 1, 2017, the amount described in  
1199 Subsection (17)(a)(i)(B) is the sum of the amount under this Subsection (17)(a) for the previous  
1200 year and an amount equal to the greater of:

1201 (I) an amount calculated by multiplying the amount under this Subsection (17)(a) for  
1202 the previous year by the actual percent change during the previous calendar year in the  
1203 consumer price index; and

1204 (II) 0.

1205 (C) For purposes of this Subsection (17), the consumer price index shall be calculated

1206 as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

1207 (b) Directors may decline to receive compensation and expenses for their service.

1208 (c) The Worker's Compensation Fund shall pay compensation to and reimburse  
1209 reasonable expenses of directors as permitted by this section:

1210 (i) from the Injury Fund; and

1211 (ii) upon vouchers drawn in the same manner as the Workers' Compensation Fund pays  
1212 its normal operating expenses.

1213 (d) The chief executive officer of the Workers' Compensation Fund shall serve on the  
1214 board without payment of compensation, but may be reimbursed for reasonable expenses in  
1215 accordance with Subsection (17)(a).

1216 (e) The Workers' Compensation Fund shall annually report to the commissioner  
1217 compensation and expenses paid to the directors on the board.

1218 (18) The placement of this chapter in this title does not:

1219 (a) remove from the board of directors the managerial, financial, or operational control  
1220 of the Workers' Compensation Fund;

1221 (b) give to the state or the governor managerial, financial, or operational control of the  
1222 Workers' Compensation Fund;

1223 (c) consistent with Section [31A-33-105](#), cause the state to be liable for any:

1224 (i) obligation of the Workers' Compensation Fund; or

1225 (ii) expense, liability, or debt described in Section [31A-33-105](#);

1226 (d) alter the legal status of the Workers' Compensation Fund as:

1227 (i) a nonprofit, self-supporting, quasi-public corporation; and

1228 (ii) an insurer:

1229 (A) regulated under this title;

1230 (B) that is structured to operate in perpetuity; and

1231 (C) domiciled in the state; or

1232 (e) alter the requirement that the Workers' Compensation Fund provide workers'  
1233 compensation:

- 1234 (i) for the purposes set forth in Section 31A-33-102;
- 1235 (ii) consistent with Section 34A-2-201; and
- 1236 (iii) as provided in Section 31A-22-1001.

1237 Section 20. Section 31A-37-301 is amended to read:

1238 **31A-37-301. Incorporation -- Organization.**

1239 (1) A pure captive insurance company or a sponsored captive insurance company shall  
1240 be incorporated as a stock insurer with the capital of the pure captive insurance company or  
1241 sponsored captive insurance company:

- 1242 (a) divided into shares; and
- 1243 (b) held by the stockholders of the pure captive insurance company or sponsored  
1244 captive insurance company.

1245 (2) A pure captive insurance company or a sponsored captive insurance company  
1246 formed as a limited liability company shall be organized as a members' interest insurer with the  
1247 capital of the pure captive insurance company or sponsored captive insurance company:

- 1248 (a) divided into interests; and
- 1249 (b) held by the members of the pure captive insurance company or sponsored captive  
1250 insurance company.

1251 (3) An association captive insurance company or an industrial insured captive  
1252 insurance company may be:

1253 (a) incorporated as a stock insurer with the capital of the association captive insurance  
1254 company or industrial insured captive insurance company:

- 1255 (i) divided into shares; and
- 1256 (ii) held by the stockholders of the association captive insurance company or industrial  
1257 insured captive insurance company;

1258 (b) incorporated as a mutual insurer without capital stock, with a governing body  
1259 elected by the member organizations of the association captive insurance company or industrial  
1260 insured captive insurance company; or

1261 (c) organized as a reciprocal.

1262 (4) A captive insurance company formed as a corporation may not have fewer than  
1263 three incorporators of whom one shall be a resident of this state.

1264 (5) A captive insurance company formed as a limited liability company may not have  
1265 fewer than three organizers of whom one shall be a resident of this state.

1266 (6) (a) Before a captive insurance company formed as a corporation files the  
1267 corporation's articles of incorporation with the Division of Corporations and Commercial  
1268 Code, the incorporators shall obtain from the commissioner a certificate finding that the  
1269 establishment and maintenance of the proposed corporation will promote the general good of  
1270 the state.

1271 (b) In considering a request for a certificate under Subsection (6)(a), the commissioner  
1272 shall consider:

1273 (i) the character, reputation, financial standing, and purposes of the incorporators;

1274 (ii) the character, reputation, financial responsibility, insurance experience, and  
1275 business qualifications of the officers and directors;

1276 (iii) any information in:

1277 (A) the application for a certificate of authority; or

1278 (B) the department's files; and

1279 (iv) other aspects that the commissioner considers advisable.

1280 (7) (a) Before a captive insurance company formed as a limited liability company files  
1281 the limited liability company's [~~articles~~] certificate of organization with the Division of  
1282 Corporations and Commercial Code, the limited liability company shall obtain from the  
1283 commissioner a certificate finding that the establishment and maintenance of the proposed  
1284 limited liability company will promote the general good of the state.

1285 (b) In considering a request for a certificate under Subsection (7)(a), the commissioner  
1286 shall consider:

1287 (i) the character, reputation, financial standing, and purposes of the organizers;

1288 (ii) the character, reputation, financial responsibility, insurance experience, and  
1289 business qualifications of the managers;

1290 (iii) any information in:  
1291 (A) the application for a certificate of authority; or  
1292 (B) the department's files; and  
1293 (iv) other aspects that the commissioner considers advisable.

1294 (8) (a) A captive insurance company formed as a corporation shall file with the  
1295 Division of Corporations and Commercial Code:  
1296 (i) the captive insurance company's articles of incorporation;  
1297 (ii) the certificate issued pursuant to Subsection (6); and  
1298 (iii) the fees required by the Division of Corporations and Commercial Code.

1299 (b) The Division of Corporations and Commercial Code shall file both the articles of  
1300 incorporation and the certificate described in Subsection (6) for a captive insurance company  
1301 that complies with this section.

1302 (9) (a) A captive insurance company formed as a limited liability company shall file  
1303 with the Division of Corporations and Commercial Code:  
1304 (i) the captive insurance company's certificate of organization;  
1305 (ii) the certificate issued pursuant to Subsection (7); and  
1306 (iii) the fees required by the Division of Corporations and Commercial Code.

1307 (b) The Division of Corporations and Commercial Code shall file both the certificate  
1308 of organization and the certificate described in Subsection (7) for a captive insurance company  
1309 that complies with this section.

1310 (10) (a) The organizers of a captive insurance company formed as a reciprocal insurer  
1311 shall obtain from the commissioner a certificate finding that the establishment and maintenance  
1312 of the proposed association will promote the general good of the state.

1313 (b) In considering a request for a certificate under Subsection (10)(a), the  
1314 commissioner shall consider:  
1315 (i) the character, reputation, financial standing, and purposes of the incorporators;  
1316 (ii) the character, reputation, financial responsibility, insurance experience, and  
1317 business qualifications of the officers and directors;

1318 (iii) any information in:

1319 (A) the application for a certificate of authority; or

1320 (B) the department's files; and

1321 (iv) other aspects that the commissioner considers advisable.

1322 (11) (a) An alien captive insurance company that has received a certificate of authority  
1323 to act as a branch captive insurance company shall obtain from the commissioner a certificate  
1324 finding that:

1325 (i) the home state of the alien captive insurance company imposes statutory or  
1326 regulatory standards in a form acceptable to the commissioner on companies transacting the  
1327 business of insurance in that state; and

1328 (ii) after considering the character, reputation, financial responsibility, insurance  
1329 experience, and business qualifications of the officers and directors of the alien captive  
1330 insurance company, and other relevant information, the establishment and maintenance of the  
1331 branch operations will promote the general good of the state.

1332 (b) After the commissioner issues a certificate under Subsection (11)(a) to an alien  
1333 captive insurance company, the alien captive insurance company may register to do business in  
1334 this state.

1335 (12) At least one of the members of the board of directors of a captive insurance  
1336 company formed as a corporation shall be a resident of this state.

1337 (13) At least one of the managers of a limited liability company shall be a resident of  
1338 this state.

1339 (14) At least one of the members of the subscribers' advisory committee of a captive  
1340 insurance company formed as a reciprocal insurer shall be a resident of this state.

1341 (15) (a) A captive insurance company formed as a corporation under this chapter has  
1342 the privileges and is subject to the provisions of the general corporation law as well as the  
1343 applicable provisions contained in this chapter.

1344 (b) If a conflict exists between a provision of the general corporation law and a  
1345 provision of this chapter, this chapter shall control.

1346 (c) Except as provided in Subsection (15)(d), the provisions of this title pertaining to a  
1347 merger, consolidation, conversion, mutualization, and redomestication apply in determining the  
1348 procedures to be followed by a captive insurance company in carrying out any of the  
1349 transactions described in those provisions.

1350 (d) Notwithstanding Subsection (15)(c), the commissioner may waive or modify the  
1351 requirements for public notice and hearing in accordance with rules adopted under Section  
1352 [31A-37-106](#).

1353 (e) If a notice of public hearing is required, but no one requests a hearing, the  
1354 commissioner may cancel the public hearing.

1355 (16) (a) A captive insurance company formed as a limited liability company under this  
1356 chapter has the privileges and is subject to Title 48, Chapter 2c, Utah Revised Limited Liability  
1357 Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act,  
1358 as appropriate pursuant to Section [48-3a-1405](#), as well as the applicable provisions in this  
1359 chapter.

1360 (b) If a conflict exists between a provision of the limited liability company law and a  
1361 provision of this chapter, this chapter controls.

1362 (c) The provisions of this title pertaining to a merger, consolidation, conversion,  
1363 mutualization, and redomestication apply in determining the procedures to be followed by a  
1364 captive insurance company in carrying out any of the transactions described in those  
1365 provisions.

1366 (d) Notwithstanding Subsection (16)(c), the commissioner may waive or modify the  
1367 requirements for public notice and hearing in accordance with rules adopted under Section  
1368 [31A-37-106](#).

1369 (e) If a notice of public hearing is required, but no one requests a hearing, the  
1370 commissioner may cancel the public hearing.

1371 (17) (a) A captive insurance company formed as a reciprocal insurer under this chapter  
1372 has the powers set forth in Section [31A-4-114](#) in addition to the applicable provisions of this  
1373 chapter.

1374 (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions  
1375 of this chapter with respect to a captive insurance company, this chapter shall control.

1376 (c) To the extent a reciprocal insurer is made subject to other provisions of this title  
1377 pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer  
1378 formed under this chapter unless the provisions are expressly made applicable to a captive  
1379 insurance company under this chapter.

1380 (d) In addition to the provisions of this Subsection (17), a captive insurance company  
1381 organized as a reciprocal insurer that is an industrial insured group has the privileges of Section  
1382 31A-4-114 in addition to applicable provisions of this title.

1383 (18) (a) The articles of incorporation or bylaws of a captive insurance company formed  
1384 as a corporation may not authorize a quorum of a board of directors to consist of fewer than  
1385 one-third of the fixed or prescribed number of directors as provided in Section 16-10a-824.

1386 (b) The certificate of organization of a captive insurance company formed as a limited  
1387 liability company may not authorize a quorum of a board of managers to consist of fewer than  
1388 one-third of the fixed or prescribed number of directors required in Section 16-10a-824.

1389 Section 21. Section 31A-37-502 is amended to read:

1390 **31A-37-502. Examination.**

1391 (1) (a) As provided in this section, the commissioner, or a person appointed by the  
1392 commissioner, shall examine each captive insurance company in each five-year period.

1393 (b) The five-year period described in Subsection (1)(a) shall be determined on the basis  
1394 of five full annual accounting periods of operation.

1395 (c) The examination is to be made as of:

1396 (i) December 31 of the full [~~three~~] five-year period; or

1397 (ii) the last day of the month of an annual accounting period authorized for a captive  
1398 insurance company under this section.

1399 (d) In addition to an examination required under this Subsection (1), the commissioner,  
1400 or a person appointed by the commissioner may examine a captive insurance company  
1401 whenever the commissioner determines it to be prudent.

1402 (2) During an examination under this section the commissioner, or a person appointed  
1403 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance  
1404 company to ascertain:

1405 (a) the financial condition of the captive insurance company;

1406 (b) the ability of the captive insurance company to fulfill the obligations of the captive  
1407 insurance company; and

1408 (c) whether the captive insurance company has complied with this chapter.

1409 (3) The commissioner may accept a comprehensive annual independent audit in lieu of  
1410 an examination:

1411 (a) of a scope satisfactory to the commissioner; and

1412 (b) performed by an independent auditor approved by the commissioner.

1413 (4) A captive insurance company that is inspected and examined under this section  
1414 shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an  
1415 inspection and examination.

1416 Section 22. Section **32B-1-102** is amended to read:

1417 **32B-1-102. Definitions.**

1418 As used in this title:

1419 (1) "Airport lounge" means a business location:

1420 (a) at which an alcoholic product is sold at retail for consumption on the premises; and

1421 (b) that is located at an international airport with a United States Customs office on the  
1422 premises of the international airport.

1423 (2) "Airport lounge license" means a license issued in accordance with Chapter 5,  
1424 Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

1425 (3) "Alcoholic beverage" means the following:

1426 (a) beer; or

1427 (b) liquor.

1428 (4) (a) "Alcoholic product" means a product that:

1429 (i) contains at least .5% of alcohol by volume; and

1430 (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other  
1431 process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol  
1432 in an amount equal to or greater than .5% of alcohol by volume.

1433 (b) "Alcoholic product" includes an alcoholic beverage.

1434 (c) "Alcoholic product" does not include any of the following common items that  
1435 otherwise come within the definition of an alcoholic product:

1436 (i) except as provided in Subsection (4)(d), an extract;

1437 (ii) vinegar;

1438 (iii) cider;

1439 (iv) essence;

1440 (v) tincture;

1441 (vi) food preparation; or

1442 (vii) an over-the-counter medicine.

1443 (d) "Alcoholic product" includes an extract containing alcohol obtained by distillation  
1444 when it is used as a flavoring in the manufacturing of an alcoholic product.

1445 (5) "Alcohol training and education seminar" means a seminar that is:

1446 (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and

1447 (b) described in Section [62A-15-401](#).

1448 (6) "Banquet" means an event:

1449 (a) that is held at one or more designated locations approved by the commission in or  
1450 on the premises of a:

1451 (i) hotel;

1452 (ii) resort facility;

1453 (iii) sports center; or

1454 (iv) convention center;

1455 (b) for which there is a contract:

1456 (i) between a person operating a facility listed in Subsection (6)(a) and another person;

1457 and

1458 (ii) under which the person operating a facility listed in Subsection (6)(a) is required to  
1459 provide an alcoholic product at the event; and

1460 (c) at which food and alcoholic products may be sold, offered for sale, or furnished.

1461 (7) (a) "Bar" means a surface or structure:

1462 (i) at which an alcoholic product is:

1463 (A) stored; or

1464 (B) dispensed; or

1465 (ii) from which an alcoholic product is served.

1466 (b) "Bar structure" means a surface or structure on a licensed premises if on or at any  
1467 place of the surface or structure an alcoholic product is:

1468 (i) stored; or

1469 (ii) dispensed.

1470 (8) (a) Subject to Subsection (8)(d), "beer" means a product that:

1471 (i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by  
1472 volume or 3.2% by weight; and

1473 (ii) is obtained by fermentation, infusion, or decoction of malted grain.

1474 (b) "Beer" may or may not contain hops or other vegetable products.

1475 (c) "Beer" includes a product that:

1476 (i) contains alcohol in the percentages described in Subsection (8)(a); and

1477 (ii) is referred to as:

1478 (A) beer;

1479 (B) ale;

1480 (C) porter;

1481 (D) stout;

1482 (E) lager; or

1483 (F) a malt or malted beverage.

1484 (d) "Beer" does not include a flavored malt beverage.

1485 (9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5,

1486 Retail License Act, and Chapter 6, Part 9, Beer-Only Restaurant License.

1487 (10) "Beer retailer" means a business:

1488 (a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron,  
1489 whether for consumption on or off the business premises; and

1490 (b) to whom a license is issued:

1491 (i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-Premise  
1492 Beer Retailer Local Authority; or

1493 (ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act,  
1494 and Chapter 6, Part 7, On-Premise Beer Retailer License.

1495 (11) "Beer wholesaling license" means a license:

1496 (a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

1497 (b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more  
1498 retail licensees or off-premise beer retailers.

1499 (12) "Billboard" means a public display used to advertise, including:

1500 (a) a light device;

1501 (b) a painting;

1502 (c) a drawing;

1503 (d) a poster;

1504 (e) a sign;

1505 (f) a signboard; or

1506 (g) a scoreboard.

1507 (13) "Brewer" means a person engaged in manufacturing:

1508 (a) beer;

1509 (b) heavy beer; or

1510 (c) a flavored malt beverage.

1511 (14) "Brewery manufacturing license" means a license issued in accordance with  
1512 Chapter 11, Part 5, Brewery Manufacturing License.

1513 (15) "Certificate of approval" means a certificate of approval obtained from the

1514 department under Section 32B-11-201.

1515 (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by  
1516 a bus company to a group of persons pursuant to a common purpose:

1517 (a) under a single contract;

1518 (b) at a fixed charge in accordance with the bus company's tariff; and

1519 (c) to give the group of persons the exclusive use of the passenger bus, coach, or other  
1520 motor vehicle, and a driver to travel together to one or more specified destinations.

1521 (17) "Church" means a building:

1522 (a) set apart for worship;

1523 (b) in which religious services are held;

1524 (c) with which clergy is associated; and

1525 (d) that is tax exempt under the laws of this state.

1526 (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail  
1527 License Act, and Chapter 6, Part 4, Club License.

1528 (b) "Club license" includes:

1529 (i) a dining club license;

1530 (ii) an equity club license;

1531 (iii) a fraternal club license; or

1532 (iv) a social club license.

1533 (19) "Commission" means the Alcoholic Beverage Control Commission created in  
1534 Section 32B-2-201.

1535 (20) "Commissioner" means a member of the commission.

1536 (21) "Community location" means:

1537 (a) a public or private school;

1538 (b) a church;

1539 (c) a public library;

1540 (d) a public playground; or

1541 (e) a public park.

- 1542 (22) "Community location governing authority" means:
- 1543 (a) the governing body of the community location; or
- 1544 (b) if the commission does not know who is the governing body of a community
- 1545 location, a person who appears to the commission to have been given on behalf of the
- 1546 community location the authority to prohibit an activity at the community location.
- 1547 (23) "Container" means a receptacle that contains an alcoholic product, including:
- 1548 (a) a bottle;
- 1549 (b) a vessel; or
- 1550 (c) a similar item.
- 1551 (24) "Convention center" means a facility that is:
- 1552 (a) in total at least 30,000 square feet; and
- 1553 (b) otherwise defined as a "convention center" by the commission by rule.
- 1554 (25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a
- 1555 dining area of a licensed premises where seating is provided to a patron for service of food.
- 1556 (b) "Counter" does not include a surface or structure if on or at any point of the surface
- 1557 or structure an alcoholic product is:
- 1558 (i) stored; or
- 1559 (ii) dispensed.
- 1560 (26) "Department" means the Department of Alcoholic Beverage Control created in
- 1561 Section [32B-2-203](#).
- 1562 (27) "Department compliance officer" means an individual who is:
- 1563 (a) an auditor or inspector; and
- 1564 (b) employed by the department.
- 1565 (28) "Department sample" means liquor that is placed in the possession of the
- 1566 department for testing, analysis, and sampling.
- 1567 (29) "Dining club license" means a license issued in accordance with Chapter 5, Retail
- 1568 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
- 1569 dining club license.

1570 (30) "Director," unless the context requires otherwise, means the director of the  
1571 department.

1572 (31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this  
1573 title:

1574 (a) against a person subject to administrative action; and

1575 (b) that is brought on the basis of a violation of this title.

1576 (32) (a) Subject to Subsection (32)(b), "dispense" means:

1577 (i) drawing of an alcoholic product:

1578 (A) from an area where it is stored; or

1579 (B) as provided in Subsection [32B-6-205\(12\)\(b\)\(ii\)](#), [32B-6-305\(12\)\(b\)\(ii\)](#),

1580 [32B-6-805\(15\)\(b\)\(ii\)](#), or [32B-6-905\(12\)\(b\)\(ii\)](#); and

1581 (ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of  
1582 the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the  
1583 retail licensee.

1584 (b) The definition of "dispense" in this Subsection (32) applies only to:

1585 (i) a full-service restaurant license;

1586 (ii) a limited-service restaurant license;

1587 (iii) a reception center license; and

1588 (iv) a beer-only restaurant license.

1589 (33) "Distillery manufacturing license" means a license issued in accordance with  
1590 Chapter 11, Part 4, Distillery Manufacturing License.

1591 (34) "Distressed merchandise" means an alcoholic product in the possession of the  
1592 department that is saleable, but for some reason is unappealing to the public.

1593 (35) "Educational facility" includes:

1594 (a) a nursery school;

1595 (b) an infant day care center; and

1596 (c) a trade and technical school.

1597 (36) "Equity club license" means a license issued in accordance with Chapter 5, Retail

1598 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an  
1599 equity club license.

1600 (37) "Event permit" means:

1601 (a) a single event permit; or

1602 (b) a temporary beer event permit.

1603 (38) "Exempt license" means a license exempt under Section 32B-1-201 from being  
1604 considered in determining the total number of [a] retail [~~license~~] licenses that the commission  
1605 may issue at any time.

1606 (39) (a) "Flavored malt beverage" means a beverage:

1607 (i) that contains at least .5% alcohol by volume;

1608 (ii) that is treated by processing, filtration, or another method of manufacture that is not  
1609 generally recognized as a traditional process in the production of a beer as described in 27  
1610 C.F.R. Sec. 25.55;

1611 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop  
1612 extract; and

1613 (iv) (A) for which the producer is required to file a formula for approval with the  
1614 federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

1615 (B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

1616 (b) "Flavored malt beverage" is considered liquor for purposes of this title.

1617 (40) "Fraternal club license" means a license issued in accordance with Chapter 5,  
1618 Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission  
1619 as a fraternal club license.

1620 (41) "Full-service restaurant license" means a license issued in accordance with  
1621 Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-Service Restaurant License.

1622 (42) (a) "Furnish" means by any means to provide with, supply, or give an individual  
1623 an alcoholic product, by sale or otherwise.

1624 (b) "Furnish" includes to:

1625 (i) serve;

- 1626 (ii) deliver; or
- 1627 (iii) otherwise make available.
- 1628 (43) "Guest" means an individual who meets the requirements of Subsection
- 1629 [32B-6-407\(9\)](#).
- 1630 (44) "Health care practitioner" means:
- 1631 (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- 1632 (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;
- 1633 (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
- 1634 (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice
- 1635 Act;
- 1636 (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b,
- 1637 Nurse Practice Act;
- 1638 (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy
- 1639 Practice Act;
- 1640 (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational
- 1641 Therapy Practice Act;
- 1642 (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 1643 (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health
- 1644 Professional Practice Act;
- 1645 (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;
- 1646 (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical
- 1647 Practice Act;
- 1648 (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental
- 1649 Hygienist Practice Act; and
- 1650 (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.
- 1651 (45) (a) "Heavy beer" means a product that:
- 1652 (i) contains more than 4% alcohol by volume; and
- 1653 (ii) is obtained by fermentation, infusion, or decoction of malted grain.

- 1654 (b) "Heavy beer" is considered liquor for the purposes of this title.
- 1655 (46) "Hotel" is as defined by the commission by rule.
- 1656 (47) "Identification card" means an identification card issued under Title 53, Chapter 3,  
1657 Part 8, Identification Card Act.
- 1658 (48) "Industry representative" means an individual who is compensated by salary,  
1659 commission, or other means for representing and selling an alcoholic product of a  
1660 manufacturer, supplier, or importer of liquor.
- 1661 (49) "Industry representative sample" means liquor that is placed in the possession of  
1662 the department for testing, analysis, and sampling by a local industry representative on the  
1663 premises of the department to educate the local industry representative of the quality and  
1664 characteristics of the product.
- 1665 (50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing  
1666 of an alcoholic product is prohibited by:
- 1667 (a) law; or
- 1668 (b) court order.
- 1669 (51) "Intoxicated" means that a person:
- 1670 (a) is significantly impaired as to the person's mental or physical functions as a result of  
1671 the use of:
- 1672 (i) an alcoholic product;
- 1673 (ii) a controlled substance;
- 1674 (iii) a substance having the property of releasing toxic vapors; or
- 1675 (iv) a combination of Subsections (51)(a)(i) through (iii); and
- 1676 (b) exhibits plain and easily observed outward manifestations of behavior or physical  
1677 signs produced by the overconsumption of an alcoholic product.
- 1678 (52) "Investigator" means an individual who is:
- 1679 (a) a department compliance officer; or
- 1680 (b) a nondepartment enforcement officer.
- 1681 (53) "Invitee" means the same as that term is [as] defined in Section [32B-8-102](#).

- 1682 (54) "License" means:
- 1683 (a) a retail license;
- 1684 (b) a license issued in accordance with Chapter 11, Manufacturing and Related
- 1685 Licenses Act;
- 1686 (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act;
- 1687 or
- 1688 (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.
- 1689 (55) "Licensee" means a person who holds a license.
- 1690 (56) "Limited-service restaurant license" means a license issued in accordance with
- 1691 Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-Service Restaurant License.
- 1692 (57) "Limousine" means a motor vehicle licensed by the state or a local authority, other
- 1693 than a bus or taxicab:
- 1694 (a) in which the driver and a passenger are separated by a partition, glass, or other
- 1695 barrier;
- 1696 (b) that is provided by a business entity to one or more individuals at a fixed charge in
- 1697 accordance with the business entity's tariff; and
- 1698 (c) to give the one or more individuals the exclusive use of the limousine and a driver
- 1699 to travel to one or more specified destinations.
- 1700 (58) (a) (i) "Liquor" means a liquid that:
- 1701 (A) is:
- 1702 (I) alcohol;
- 1703 (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;
- 1704 (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or
- 1705 (IV) other drink or drinkable liquid; and
- 1706 (B) (I) contains at least .5% alcohol by volume; and
- 1707 (II) is suitable to use for beverage purposes.
- 1708 (ii) "Liquor" includes:
- 1709 (A) heavy beer;

- 1710 (B) wine; and
- 1711 (C) a flavored malt beverage.
- 1712 (b) "Liquor" does not include beer.
- 1713 (59) "Liquor Control Fund" means the enterprise fund created by Section [32B-2-301](#).
- 1714 (60) "Liquor warehousing license" means a license that is issued:
  - 1715 (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
  - 1716 (b) to a person, other than a licensed manufacturer, who engages in the importation for
  - 1717 storage, sale, or distribution of liquor regardless of amount.
- 1718 (61) "Local authority" means:
  - 1719 (a) for premises that are located in an unincorporated area of a county, the governing
  - 1720 body of a county; or
  - 1721 (b) for premises that are located in an incorporated city or a town, the governing body
  - 1722 of the city or town.
- 1723 (62) "Lounge or bar area" is as defined by rule made by the commission.
- 1724 (63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or
- 1725 otherwise make an alcoholic product for personal use or for sale or distribution to others.
- 1726 (64) "Member" means an individual who, after paying regular dues, has full privileges
- 1727 in an equity club licensee or fraternal club licensee.
- 1728 (65) (a) "Military installation" means a base, air field, camp, post, station, yard, center,
- 1729 or homeport facility for a ship:
  - 1730 (i) (A) under the control of the United States Department of Defense; or
  - 1731 (B) of the National Guard;
  - 1732 (ii) that is located within the state; and
  - 1733 (iii) including a leased facility.
  - 1734 (b) "Military installation" does not include a facility used primarily for:
    - 1735 (i) civil works;
    - 1736 (ii) a rivers and harbors project; or
    - 1737 (iii) a flood control project.

- 1738 (66) "Minor" means an individual under the age of 21 years.
- 1739 (67) "Nondepartment enforcement agency" means an agency that:
- 1740 (a) (i) is a state agency other than the department; or
- 1741 (ii) is an agency of a county, city, or town; and
- 1742 (b) has a responsibility to enforce one or more provisions of this title.
- 1743 (68) "Nondepartment enforcement officer" means an individual who is:
- 1744 (a) a peace officer, examiner, or investigator; and
- 1745 (b) employed by a nondepartment enforcement agency.
- 1746 (69) (a) "Off-premise beer retailer" means a beer retailer who is:
- 1747 (i) licensed in accordance with Chapter 7, Part 2, Off-Premise Beer Retailer Local
- 1748 Authority; and
- 1749 (ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's
- 1750 premises.
- 1751 (b) "Off-premise beer retailer" does not include an on-premise beer retailer.
- 1752 (70) "On-premise banquet license" means a license issued in accordance with Chapter
- 1753 5, Retail License Act, and Chapter 6, Part 6, On-Premise Banquet License.
- 1754 (71) "On-premise beer retailer" means a beer retailer who is:
- 1755 (a) authorized to sell, offer for sale, or furnish beer under a license issued in
- 1756 accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-Premise Beer
- 1757 Retailer License; and
- 1758 (b) engaged in the sale of beer to a patron for consumption on the beer retailer's
- 1759 premises:
- 1760 (i) regardless of whether the beer retailer sells beer for consumption off the licensed
- 1761 premises; and
- 1762 (ii) on and after March 1, 2012, operating:
- 1763 (A) as a tavern; or
- 1764 (B) in a manner that meets the requirements of Subsection [32B-6-703\(2\)\(e\)\(i\)](#).
- 1765 (72) "Opaque" means impenetrable to sight.

- 1766 (73) "Package agency" means a retail liquor location operated:  
1767 (a) under an agreement with the department; and  
1768 (b) by a person:  
1769 (i) other than the state; and  
1770 (ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package  
1771 Agency, to sell packaged liquor for consumption off the premises of the package agency.  
1772 (74) "Package agent" means a person who holds a package agency.  
1773 (75) "Patron" means an individual to whom food, beverages, or services are sold,  
1774 offered for sale, or furnished, or who consumes an alcoholic product including:  
1775 (a) a customer;  
1776 (b) a member;  
1777 (c) a guest;  
1778 (d) an attendee of a banquet or event;  
1779 (e) an individual who receives room service;  
1780 (f) a resident of a resort;  
1781 (g) a public customer under a resort spa sublicense, as defined in Section [32B-8-102](#);  
1782 or  
1783 (h) an invitee.  
1784 (76) "Permittee" means a person issued a permit under:  
1785 (a) Chapter 9, Event Permit Act; or  
1786 (b) Chapter 10, Special Use Permit Act.  
1787 (77) "Person subject to administrative action" means:  
1788 (a) a licensee;  
1789 (b) a permittee;  
1790 (c) a manufacturer;  
1791 (d) a supplier;  
1792 (e) an importer;  
1793 (f) one of the following holding a certificate of approval:

- 1794 (i) an out-of-state brewer;
- 1795 (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or
- 1796 (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or
- 1797 (g) staff of:
- 1798 (i) a person listed in Subsections (77)(a) through (f); or
- 1799 (ii) a package agent.
- 1800 (78) "Premises" means a building, enclosure, or room used in connection with the
- 1801 storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product,
- 1802 unless otherwise defined in this title or rules made by the commission.
- 1803 (79) "Prescription" means an order issued by a health care practitioner when:
- 1804 (a) the health care practitioner is licensed under Title 58, Occupations and Professions,
- 1805 to prescribe a controlled substance, other drug, or device for medicinal purposes;
- 1806 (b) the order is made in the course of that health care practitioner's professional
- 1807 practice; and
- 1808 (c) the order is made for obtaining an alcoholic product for medicinal purposes only.
- 1809 (80) (a) "Private event" means a specific social, business, or recreational event:
- 1810 (i) for which an entire room, area, or hall is leased or rented in advance by an identified
- 1811 group; and
- 1812 (ii) that is limited in attendance to people who are specifically designated and their
- 1813 guests.
- 1814 (b) "Private event" does not include an event to which the general public is invited,
- 1815 whether for an admission fee or not.
- 1816 (81) (a) "Proof of age" means:
- 1817 (i) an identification card;
- 1818 (ii) an identification that:
- 1819 (A) is substantially similar to an identification card;
- 1820 (B) is issued in accordance with the laws of a state other than Utah in which the
- 1821 identification is issued;

- 1822 (C) includes date of birth; and
- 1823 (D) has a picture affixed;
- 1824 (iii) a valid driver license certificate that:
- 1825 (A) includes date of birth;
- 1826 (B) has a picture affixed; and
- 1827 (C) is issued:
- 1828 (I) under Title 53, Chapter 3, Uniform Driver License Act; or
- 1829 (II) in accordance with the laws of the state in which it is issued;
- 1830 (iv) a military identification card that:
- 1831 (A) includes date of birth; and
- 1832 (B) has a picture affixed; or
- 1833 (v) a valid passport.
- 1834 (b) "Proof of age" does not include a driving privilege card issued in accordance with

1835 Section [53-3-207](#).

1836 (82) (a) "Public building" means a building or permanent structure that is:

- 1837 (i) owned or leased by:
- 1838 (A) the state; or
- 1839 (B) a local government entity; and
- 1840 (ii) used for:
- 1841 (A) public education;
- 1842 (B) transacting public business; or
- 1843 (C) regularly conducting government activities.

1844 (b) "Public building" does not include a building owned by the state or a local  
1845 government entity when the building is used by a person, in whole or in part, for a proprietary  
1846 function.

1847 (83) "Public conveyance" means a conveyance ~~[to which]~~ that the public or a portion of  
1848 the public has access to and a right to use for transportation, including an airline, railroad, bus,  
1849 boat, or other public conveyance.

- 1850 (84) "Reception center" means a business that:
- 1851 (a) operates facilities that are at least 5,000 square feet; and
- 1852 (b) has as its primary purpose the leasing of the facilities described in Subsection
- 1853 (84)(a) to a third party for the third party's event.
- 1854 (85) "Reception center license" means a license issued in accordance with Chapter 5,
- 1855 Retail License Act, and Chapter 6, Part 8, Reception Center License.
- 1856 (86) (a) "Record" means information that is:
- 1857 (i) inscribed on a tangible medium; or
- 1858 (ii) stored in an electronic or other medium and is retrievable in a perceivable form.
- 1859 (b) "Record" includes:
- 1860 (i) a book;
- 1861 (ii) a book of account;
- 1862 (iii) a paper;
- 1863 (iv) a contract;
- 1864 (v) an agreement;
- 1865 (vi) a document; or
- 1866 (vii) a recording in any medium.
- 1867 (87) "Residence" means a person's principal place of abode within Utah.
- 1868 (88) "Resident," in relation to a resort, means the same as that term is [~~as~~] defined in
- 1869 Section [32B-8-102](#).
- 1870 (89) "Resort" means the same as that term is [~~as~~] defined in Section [32B-8-102](#).
- 1871 (90) "Resort facility" is as defined by the commission by rule.
- 1872 (91) "Resort license" means a license issued in accordance with Chapter 5, Retail
- 1873 License Act, and Chapter 8, Resort License Act.
- 1874 (92) "Restaurant" means a business location:
- 1875 (a) at which a variety of foods are prepared;
- 1876 (b) at which complete meals are served to the general public; and
- 1877 (c) that is engaged primarily in serving meals to the general public.

1878 (93) "Retail license" means one of the following licenses issued under this title:

- 1879 (a) a full-service restaurant license;
- 1880 (b) a master full-service restaurant license;
- 1881 (c) a limited-service restaurant license;
- 1882 (d) a master limited-service restaurant license;
- 1883 (e) a club license;
- 1884 (f) an airport lounge license;
- 1885 (g) an on-premise banquet license;
- 1886 (h) an on-premise beer license;
- 1887 (i) a reception center license; or
- 1888 (j) a beer-only restaurant license.

1889 (94) "Room service" means furnishing an alcoholic product to a person in a guest room

1890 of a:

- 1891 (a) hotel; or
- 1892 (b) resort facility.

1893 [~~96~~] (95) (a) "School" means a building used primarily for the general education of  
1894 minors.

1895 (b) "School" does not include an educational facility.

1896 [~~97~~] (96) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby,  
1897 for consideration, an alcoholic product is either directly or indirectly transferred, solicited,  
1898 ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether  
1899 done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or  
1900 the rules made by the commission.

1901 [~~95~~] (97) "Serve" means to place an alcoholic product before an individual.

1902 (98) "Sexually oriented entertainer" means a person who while in a state of seminudity  
1903 appears at or performs:

- 1904 (a) for the entertainment of one or more patrons;
- 1905 (b) on the premises of:

- 1906 (i) a social club licensee; or
- 1907 (ii) a tavern;
- 1908 (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
- 1909 (d) on a contractual or voluntary basis; and
- 1910 (e) whether or not the person is designated as:
  - 1911 (i) an employee;
  - 1912 (ii) an independent contractor;
  - 1913 (iii) an agent of the licensee; or
  - 1914 (iv) a different type of classification.
- 1915 (99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3,
- 1916 Single Event Permit.
- 1917 (100) "Small brewer" means a brewer who manufactures less than 60,000 barrels of
- 1918 beer, heavy beer, and flavored malt beverages per year.
- 1919 (101) "Social club license" means a license issued in accordance with Chapter 5, Retail
- 1920 License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a
- 1921 social club license.
- 1922 (102) "Special use permit" means a permit issued in accordance with Chapter 10,
- 1923 Special Use Permit Act.
- 1924 (103) (a) "Spirituous liquor" means liquor that is distilled.
- 1925 (b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by
- 1926 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.
- 1927 (104) "Sports center" is as defined by the commission by rule.
- 1928 (105) (a) "Staff" means an individual who engages in activity governed by this title:
  - 1929 (i) on behalf of a business, including a package agent, licensee, permittee, or certificate
  - 1930 holder;
  - 1931 (ii) at the request of the business, including a package agent, licensee, permittee, or
  - 1932 certificate holder; or
  - 1933 (iii) under the authority of the business, including a package agent, licensee, permittee,

- 1934 or certificate holder.
- 1935 (b) "Staff" includes:
- 1936 (i) an officer;
- 1937 (ii) a director;
- 1938 (iii) an employee;
- 1939 (iv) personnel management;
- 1940 (v) an agent of the licensee, including a managing agent;
- 1941 (vi) an operator; or
- 1942 (vii) a representative.
- 1943 (106) "State of nudity" means:
- 1944 (a) the appearance of:
- 1945 (i) the nipple or areola of a female human breast;
- 1946 (ii) a human genital;
- 1947 (iii) a human pubic area; or
- 1948 (iv) a human anus; or
- 1949 (b) a state of dress that fails to opaquely cover:
- 1950 (i) the nipple or areola of a female human breast;
- 1951 (ii) a human genital;
- 1952 (iii) a human pubic area; or
- 1953 (iv) a human anus.
- 1954 (107) "State of seminudity" means a state of dress in which opaque clothing covers no
- 1955 more than:
- 1956 (a) the nipple and areola of the female human breast in a shape and color other than the
- 1957 natural shape and color of the nipple and areola; and
- 1958 (b) the human genitals, pubic area, and anus:
- 1959 (i) with no less than the following at its widest point:
- 1960 (A) four inches coverage width in the front of the human body; and
- 1961 (B) five inches coverage width in the back of the human body; and

1962 (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

1963 (108) (a) "State store" means a facility for the sale of packaged liquor:

1964 (i) located on premises owned or leased by the state; and

1965 (ii) operated by a state employee.

1966 (b) "State store" does not include:

1967 (i) a package agency;

1968 (ii) a licensee; or

1969 (iii) a permittee.

1970 (109) (a) "Storage area" means an area on licensed premises where the licensee stores  
1971 an alcoholic product.

1972 (b) "Store" means to place or maintain in a location an alcoholic product from which a  
1973 person draws to prepare an alcoholic product to be furnished to a patron, except as provided in  
1974 Subsection [32B-6-205\(12\)\(b\)\(ii\)](#), [32B-6-305\(12\)\(b\)\(ii\)](#), [32B-6-805\(15\)\(b\)\(ii\)](#), or  
1975 [32B-6-905\(12\)\(b\)\(ii\)](#).

1976 (110) "Sublicense" means the same as that term is [as] defined in Section [32B-8-102](#).

1977 (111) "Supplier" means a person who sells an alcoholic product to the department.

1978 (112) "Tavern" means an on-premise beer retailer who is:

1979 (a) issued a license by the commission in accordance with Chapter 5, Retail License  
1980 Act, and Chapter 6, Part 7, On-Premise Beer Retailer License; and

1981 (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7,  
1982 On-Premise Beer Retailer License.

1983 (113) "Temporary beer event permit" means a permit issued in accordance with  
1984 Chapter 9, Part 4, Temporary Beer Event Permit.

1985 (114) "Temporary domicile" means the principal place of abode within Utah of a  
1986 person who does not have a present intention to continue residency within Utah permanently or  
1987 indefinitely.

1988 (115) "Translucent" means a substance that allows light to pass through, but does not  
1989 allow an object or person to be seen through the substance.

- 1990 (116) "Unsaleable liquor merchandise" means a container that:
- 1991 (a) is unsaleable because the container is:
- 1992 (i) unlabeled;
- 1993 (ii) leaky;
- 1994 (iii) damaged;
- 1995 (iv) difficult to open; or
- 1996 (v) partly filled;
- 1997 (b) (i) has faded labels or defective caps or corks;
- 1998 (ii) has contents that are:
- 1999 (A) cloudy;
- 2000 (B) spoiled; or
- 2001 (C) chemically determined to be impure; or
- 2002 (iii) contains:
- 2003 (A) sediment; or
- 2004 (B) a foreign substance; or
- 2005 (c) is otherwise considered by the department as unfit for sale.
- 2006 (117) (a) "Wine" means an alcoholic product obtained by the fermentation of the
- 2007 natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not
- 2008 another ingredient is added.
- 2009 (b) "Wine" is considered liquor for purposes of this title, except as otherwise provided
- 2010 in this title.
- 2011 (118) "Winery manufacturing license" means a license issued in accordance with
- 2012 Chapter 11, Part 3, Winery Manufacturing License.
- 2013 Section 23. Section **32B-4-415** is amended to read:
- 2014 **32B-4-415. Unlawful bringing onto premises for consumption.**
- 2015 (1) Except as provided in Subsection (4), a person may not bring an alcoholic product
- 2016 for on-premise consumption onto the premises of:
- 2017 (a) a retail licensee or person required to be licensed under this title as a retail licensee;

- 2018 (b) an establishment that conducts a business similar to a retail licensee;
- 2019 (c) an event where an alcoholic product is sold, offered for sale, or furnished under a
- 2020 single event permit or temporary beer event permit issued under this title; or
- 2021 (d) an establishment open to the general public.
- 2022 (2) Except as provided in Subsection (4), the following may not allow a person to bring
- 2023 onto its premises an alcoholic product for on-premise consumption or allow consumption of an
- 2024 alcoholic product brought onto its premises in violation of this section:
- 2025 (a) a retail licensee or a person required to be licensed under this title as a retail
- 2026 licensee;
- 2027 (b) an establishment that conducts a business similar to a retail licensee;
- 2028 (c) a single event permittee or temporary beer event permittee;
- 2029 (d) an establishment open to the general public; or
- 2030 (e) staff of a person listed in Subsections (2)(a) through (d).
- 2031 (3) Except as provided in Subsection (4)(c)(i)(A), a person may not consume an
- 2032 alcoholic product in a limousine or chartered bus if the limousine or chartered bus drops off a
- 2033 passenger at a location from which the passenger departs in a private vehicle.
- 2034 (4) (a) A person may bring bottled wine onto the premises of the following and
- 2035 consume the wine pursuant to Section [32B-5-307](#):
- 2036 (i) a full-service restaurant licensee;
- 2037 (ii) a limited restaurant licensee;
- 2038 (iii) a club licensee; or
- 2039 (iv) a person operating under a resort spa sublicense.
- 2040 (b) A passenger of a limousine may bring onto, possess, and consume an alcoholic
- 2041 product ~~on~~ in the limousine if:
- 2042 (i) the travel of the limousine begins and ends at:
- 2043 (A) the residence of the passenger;
- 2044 (B) the hotel of the passenger, if the passenger is a registered guest of the hotel; or
- 2045 (C) the temporary domicile of the passenger; and

2046 (ii) the driver of the limousine is separated from the passengers by partition or other  
2047 means approved by the department.

2048 (c) A passenger of a chartered bus may bring onto, possess, and consume an alcoholic  
2049 product on the chartered bus:

2050 (i) (A) but may consume only during travel to a specified destination of the chartered  
2051 bus and not during travel back to the place where the travel begins; or

2052 (B) if the travel of the chartered bus begins and ends at:

2053 (I) the residence of the passenger;

2054 (II) the hotel of the passenger, if the passenger is a registered guest of the hotel; or

2055 (III) the temporary domicile of the passenger; and

2056 (ii) if the chartered bus has a nondrinking designee other than the driver traveling on  
2057 the chartered bus to monitor consumption.

2058 (5) A person may bring onto any premises, possess, and consume an alcoholic product  
2059 at a private event.

2060 (6) The restrictions of Subsections (2) and (3) apply to a resort licensee or person  
2061 operating under a sublicense in relationship to:

2062 (a) the boundary of a resort building; or

2063 (b) a sublicense premises.

2064 Section 24. Section **32B-6-404** is amended to read:

2065 **32B-6-404. Types of club license.**

2066 (1) To obtain an equity club license, in addition to meeting the other requirements of  
2067 this part, a person shall:

2068 (a) whether incorporated or unincorporated:

2069 (i) be organized and operated solely for a social, recreational, patriotic, or fraternal  
2070 purpose;

2071 (ii) have members;

2072 (iii) limit access to its licensed premises to a member or a guest of the member; and

2073 (iv) desire to maintain premises upon which an alcoholic product may be stored, sold

2074 to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

2075 (b) own, maintain, or operate a substantial recreational facility in conjunction with a

2076 club house such as:

2077 (i) a golf course; or

2078 (ii) a tennis facility;

2079 (c) have at least 50% of the total membership having:

2080 (i) full voting rights; and

2081 (ii) an equal share of the equity of the club; and

2082 (d) if there is more than one class of membership, have at least one class of

2083 membership that entitles each member in that class to:

2084 (i) full voting rights; and

2085 (ii) an equal share of the equity of the club.

2086 (2) To obtain a fraternal club license, in addition to meeting the other requirements of

2087 this part, a person shall:

2088 (a) whether incorporated or unincorporated:

2089 (i) be organized and operated solely for a social, recreational, patriotic, or fraternal

2090 purpose;

2091 (ii) have members;

2092 (iii) limit access to its licensed premises to a member or a guest of the member; and

2093 (iv) desire to maintain premises upon which an alcoholic product may be stored, sold

2094 to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

2095 (b) have no capital stock;

2096 (c) exist solely for:

2097 (i) the benefit of its members and their beneficiaries; and

2098 (ii) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,

2099 patriotic, or religious purpose for the benefit of its members or the public, carried on through

2100 voluntary activity of its members in their local lodges;

2101 (d) have a representative form of government;

- 2102 (e) have a lodge system in which:
- 2103 (i) there is a supreme governing body;
- 2104 (ii) subordinate to the supreme governing body are local lodges, however designated,
- 2105 into which individuals are admitted as members in accordance with the laws of the fraternal;
- 2106 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at
- 2107 least monthly; and
- 2108 (iv) the local lodges regularly engage in one or more programs involving member
- 2109 participation to implement the purposes of Subsection (2)(c); and
- 2110 (f) own or lease a building or space in a building used for lodge activities.
- 2111 (3) To obtain a dining club license, in addition to meeting the other requirements of
- 2112 this part, a person shall:
- 2113 (a) maintain at least the following percentages of its total club business from the sale of
- 2114 food, not including mix for alcoholic products, or service charges:
- 2115 (i) for a dining club license that is issued as an original license on or after July 1, 2011,
- 2116 60%; and
- 2117 (ii) for a dining club license that is issued on or before June 30, 2011:
- 2118 (A) 50% on or before June 30, 2012; and
- 2119 (B) 60% on and after July 1, 2012; and
- 2120 (b) obtain a determination by the commission that the person will operate as a dining
- 2121 club licensee, as part of which the commission may consider:
- 2122 (i) the square footage and seating capacity of the premises;
- 2123 (ii) what portion of the square footage and seating capacity will be used for a dining
- 2124 area in comparison to the portion that will be used as a lounge or bar area;
- 2125 (iii) whether full meals including appetizers, main courses, and desserts are served;
- 2126 (iv) whether the person will maintain adequate on-premise culinary facilities to prepare
- 2127 full meals, except a person who is located on the premise of a hotel or resort facility may use
- 2128 the culinary facilities of the hotel or resort facility;
- 2129 (v) whether the entertainment provided at the club is suitable for minors; and

2130 (vi) the club management's ability to manage and operate a dining club license  
2131 including:  
2132 (A) management experience;  
2133 (B) past dining club licensee or restaurant management experience; and  
2134 (C) the type of management scheme used by the dining club license.  
2135 (4) To obtain a social club license, a person is required to meet the requirements of this  
2136 part except those listed in Subsection (1), (2), or (3).

2137 (5) (a) At the time that the commission issues a club license, the commission shall  
2138 designate the type of club license for which the person qualifies.

2139 (b) If requested by a club licensee, the commission may approve a change in the type of  
2140 club license in accordance with rules made by the commission.

2141 (6) To the extent not prohibited by law, this part does not prevent a dining club  
2142 licensee or social club licensee from restricting access to the club's licensed premises on the  
2143 basis of an individual:

2144 (a) paying a fee; or

2145 (b) agreeing to being on a list of individuals who have access to the club's licensed  
2146 premises.

2147 Section 25. Section **34-19-5** is amended to read:

2148 **34-19-5. Injunctive relief -- When available -- Necessary findings -- Procedure.**

2149 (1) No court, nor any judge or judges of a court, shall have jurisdiction to issue a  
2150 temporary or permanent injunction in any case involving or growing out of a labor dispute, as  
2151 defined in Section **34-19-11**, except after hearing the testimony of witnesses in open court, with  
2152 opportunity for cross-examination, in support of the allegations of a complaint made under oath  
2153 and testimony in opposition to it, if offered, and except after findings of all of the facts  
2154 described in Subsection (2) by the court, or a judge or judges.

2155 (2) The findings required by Subsection (1) are all of the following:

2156 (a) that unlawful acts have been threatened or committed and will be executed or  
2157 continued unless restrained;

2158 (b) that substantial and irreparable injury to property or property rights of the  
2159 complainant will follow unless the relief requested is granted;

2160 (c) that as to each item of relief granted greater injury will be inflicted upon  
2161 complainant by the denial of it than will be inflicted upon defendants by the granting of it;

2162 (d) that no item of relief granted is relief that a court or judge of it has no jurisdiction to  
2163 restrain or enjoin under Section 34-19-2;

2164 (e) that the complainant has no adequate remedy at law; and

2165 (f) that the public officers charged with the duty to protect complainant's property have  
2166 failed or are unable to furnish adequate protection.

2167 (3) Subject to Subsection (4), the hearing required by Subsection (1) shall be held after  
2168 due and personal notice of it has been given, in such manner as the court shall direct, to all  
2169 known persons against whom relief is sought, and also to those public officers charged with the  
2170 duty to protect complainant's property.

2171 (4) (a) If a complainant shall also allege that unless a temporary restraining order shall  
2172 be issued before a hearing may be had, a substantial and irreparable injury to complainant's  
2173 property will be unavoidable, a temporary restraining order may be granted upon the expiration  
2174 of such reasonable notice of application for the restraining order as the court may direct by  
2175 order to show cause, but in no less than 48 hours. This order to show cause shall be served  
2176 upon such party or parties as are sought to be restrained and as shall be specified in the order,  
2177 and the restraining order shall issue only upon testimony, or in the discretion of the court, upon  
2178 affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a  
2179 hearing as provided for in this section.

2180 (b) Such a temporary restraining order shall be effective for no longer than five days,  
2181 and at the expiration of said five days shall become void and not subject to renewal or  
2182 extension, except that if the hearing for a temporary injunction shall have been begun before  
2183 the expiration of the five days, the restraining order may in the court's discretion be continued  
2184 until a decision is reached upon the issuance of the temporary injunction.

2185 (5) No temporary restraining order or temporary injunction shall be issued except on

2186 condition that the complainant shall first file an undertaking with adequate security sufficient to  
2187 recompense those enjoined for any loss, expense, or damage caused by the improvident or  
2188 erroneous issuance of such order or injunction, including all reasonable costs, together with  
2189 reasonable attorney fees, and expense against the order or against the granting of any injunctive  
2190 relief sought in the same proceeding and subsequently denied by the court. This undertaking  
2191 shall be understood to signify an agreement entered into by the complainant and the surety  
2192 upon which a decree may be rendered in the same suit or proceeding against such complainant  
2193 and surety, the complainant and the surety submitting themselves to the jurisdiction of the court  
2194 for that purpose, except that nothing in this Subsection (5) shall deprive any party having a  
2195 claim or cause of action under or upon such undertaking from electing to pursue the party's  
2196 ordinary remedy by suit at law or in equity.

2197 Section 26. Section **34-20-3** is amended to read:

2198 **34-20-3. Labor relations board.**

2199 (1) (a) There is created the Labor Relations Board consisting of the following:

2200 (i) the commissioner of the Labor Commission;

2201 (ii) two members appointed by the governor with the consent of the Senate consisting  
2202 of:

2203 (A) a representative of employers, [~~in making this appointment~~] in the appointment of  
2204 whom the governor shall consider nominations from employer organizations; and

2205 (B) a representative of employees, [~~in making this appointment~~] in the appointment of  
2206 whom the governor shall consider nominations from employee organizations.

2207 (b) (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed  
2208 under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed  
2209 member to a four-year term.

2210 (ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the  
2211 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
2212 members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every  
2213 two years.

2214 (c) The commissioner shall serve as chair of the board.

2215 (d) A vacancy occurring on the board for any cause of the members appointed under  
2216 Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to  
2217 this section for the unexpired term of the vacating member.

2218 (e) The governor may at any time remove a member appointed under Subsection  
2219 (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for  
2220 cause upon a hearing.

2221 (f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any  
2222 other office in the government of the United States, this state or any other state, or of any  
2223 county government or municipal corporation within a state.

2224 (g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or  
2225 benefits for the member's service, but may receive per diem and travel expenses in accordance  
2226 with:

2227 (i) Section 63A-3-106;

2228 (ii) Section 63A-3-107; and

2229 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
2230 63A-3-107.

2231 (2) A meeting of the board may be called:

2232 (a) by the chair; or

2233 (b) jointly by the members appointed under Subsection (1)(a)(ii).

2234 (3) The chair may provide staff and administrative support as necessary from the Labor  
2235 Commission.

2236 (4) A vacancy in the board does not impair the right of the remaining members to  
2237 exercise all the powers of the board, and two members of the board shall at all times constitute  
2238 a quorum.

2239 (5) The board shall have an official seal which shall be judicially noticed.

2240 Section 27. Section 34-20-8 is amended to read:

2241 **34-20-8. Unfair labor practices.**

2242 (1) It shall be an unfair labor practice for an employer, individually or in concert with  
2243 others:

2244 (a) To interfere with, restrain or coerce employees in the exercise of the rights  
2245 guaranteed in Section 34-20-7.

2246 (b) To dominate or interfere with the formation or administration of any labor  
2247 organization or contribute financial or other support to it; provided, that subject to rules and  
2248 regulations made and published by the board pursuant to Section 34-20-6, an employer is not  
2249 prohibited from permitting employees to confer with the employer during working hours  
2250 without loss of time or pay.

2251 (c) By discrimination in regard to hire or tenure of employment or any term ~~[of]~~ or  
2252 condition of employment to encourage or discourage membership in any labor organization;  
2253 provided, that nothing in this act shall preclude an employer from making an agreement with a  
2254 labor organization (not established, maintained or assisted by any action defined in this act as  
2255 an unfair labor practice) to require as a condition of employment, membership therein, if such  
2256 labor organization is the representative of the employees as provided in Subsection 34-20-9(1)  
2257 in the appropriate collective bargaining unit covered by such agreement when made.

2258 (d) To refuse to bargain collectively with the representative of a majority of the  
2259 employer's employees in any collective bargaining unit; provided, that, when two or more labor  
2260 organizations claim to represent a majority of the employees in the bargaining unit, the  
2261 employer shall be free to file with the board a petition for investigation of certification of  
2262 representatives and during the pendency of the proceedings the employer may not be  
2263 considered to have refused to bargain.

2264 (e) To bargain collectively with the representatives of less than a majority of the  
2265 employer's employees in a collective bargaining unit.

2266 (f) To discharge or otherwise discriminate against an employee because the employee  
2267 has filed charges or given testimony under this chapter.

2268 (2) It shall be an unfair labor practice for an employee individually or in concert with  
2269 others:

2270 (a) To coerce or intimidate an employee in the enjoyment of the employee's legal  
2271 rights, including those guaranteed in Section 34-20-7, or to intimidate the employee's family,  
2272 picket the employee's domicile, or injure the person or property of the employee or the  
2273 employee's family.

2274 (b) To coerce, intimidate or induce an employer to interfere with any of the employer's  
2275 employees in the enjoyment of their legal rights, including those guaranteed in Section 34-20-7,  
2276 or to engage in any practice with regard to the employer's employees which would constitute an  
2277 unfair labor practice if undertaken by the employer on the employer's own initiative.

2278 (c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an  
2279 exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant  
2280 of a strike unless a majority in a collective bargaining unit of the employees of an employer  
2281 against whom such acts are primarily directed have voted by secret ballot to call a strike.

2282 (d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of  
2283 any kind the pursuit of any lawful work or employment, or to obstruct or interfere with  
2284 entrance to or egress from any place of employment, or to obstruct or interfere with free and  
2285 uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel  
2286 or conveyance.

2287 (e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation,  
2288 force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or  
2289 services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of  
2290 materials, equipment or services, provided, however, that nothing herein shall prevent  
2291 sympathetic strikes in support of those in similar occupations working for other employers in  
2292 the same craft.

2293 (f) To take unauthorized possession of property of the employer.

2294 (3) It shall be an unfair labor practice for any person to do or cause to be done on  
2295 behalf of or in the interest of employers or employees, or in connection with or to influence the  
2296 outcome of any controversy as to employment relations, any act prohibited by Subsections (1)  
2297 and (2) of this section.

2298 Section 28. Section **34-30-13** is amended to read:

2299 **34-30-13. Compliance with federal requirements.**

2300 Notwithstanding any other provision in this chapter to the contrary, the governor of the  
2301 state of Utah may, in [~~his~~] the governor's discretion, elect to suspend the provisions of this  
2302 chapter in whole or in part if it becomes necessary to do so in order to comply with  
2303 requirements imposed by the government of the United States, in order for the state of Utah to  
2304 remain eligible for participation in programs which are financed in whole or in part by the  
2305 United States government.

2306 Section 29. Section **34-38-2** is amended to read:

2307 **34-38-2. Definitions.**

2308 For purposes of this chapter:

2309 (1) "Alcohol" means ethyl alcohol or ethanol.

2310 (2) "Drugs" means a substance recognized as a drug in the United States  
2311 Pharmacopoeia, the National Formulary, the Homeopathic Pharmacopoeia, or other drug  
2312 compendia, or supplement to any of those compendia.

2313 [~~(4)~~] (3) "Employee" means an individual in the service of an employer for  
2314 compensation.

2315 [~~(3)~~] (4) (a) "Employer" means a person, including a public utility or transit district,  
2316 that has one or more workers or operators employed in the same business, or in or about the  
2317 same establishment, under any contract of hire, express or implied, oral or written.

2318 (b) "Employer" does not include the federal or state government, or other local political  
2319 subdivisions.

2320 (5) "Failed test" means a confirmed drug or alcohol test that indicates that the sample  
2321 tested is:

2322 (a) positive;

2323 (b) adulterated; or

2324 (c) substituted.

2325 (6) "Inaccurate test result" means a test result that is treated as a positive test result,

2326 when the sample should not have resulted in a positive test result.

2327 (7) "Licensed physician" means an individual who is licensed:

2328 (a) as a doctor of medicine under Title 58, Chapter 67, Utah Medical Practice Act, or  
2329 similar law of another state; or

2330 (b) as an osteopathic physician or surgeon under Title 58, Chapter 68, Utah  
2331 Osteopathic Medical Practice Act, or similar law of another state.

2332 (8) "Prospective employee" means an individual who applies to an employer, either in  
2333 writing or orally, to become the employer's employee.

2334 (9) "Sample" means urine, blood, breath, saliva, or hair.

2335 Section 30. Section **34-41-102** is amended to read:

2336 **34-41-102. Governmental drug-free workplace policies.**

2337 (1) Any local governmental entity or state institution of higher education may establish  
2338 workplace policies and procedures designed to:

2339 (a) educate, counsel, and increase awareness of the dangers of drugs; and

2340 (b) prohibit and discourage the detrimental use of drugs among its various classes of  
2341 employees and volunteers.

2342 (2) A local governmental entity or state institution of higher education may test  
2343 employees, volunteers, prospective employees, and prospective volunteers for the presence of  
2344 drugs or their metabolites, in accordance with the provisions of this chapter, as a condition of  
2345 hiring, continued employment, and voluntary services.

2346 (3) A drug-free workplace policy may include, but does not require, drug testing under  
2347 the following circumstances:

2348 (a) preemployment hiring or volunteer selection procedures;

2349 (b) postaccident investigations;

2350 (c) reasonable suspicion situations;

2351 (d) preannounced periodic testing;

2352 (e) rehabilitation programs;

2353 (f) random testing in safety sensitive positions; or

2354 (g) to comply with the federal Drug Free Workplace Act of 1988, 41 U.S.C. [701  
2355 through 707] Sec. 8101 et seq., or other federally required drug policies.

2356 (4) This section may not be construed to prohibit local governmental entities or state  
2357 institutions of higher education from establishing policies regarding other hazardous or  
2358 intoxicating substances.

2359 Section 31. Section **34-45-107** is amended to read:

2360 **34-45-107. Exemptions -- Limitations on chapter -- School premises --**  
2361 **Government entities -- Religious organizations -- Single family detached residential units.**

2362 (1) (a) School premises, as defined in Subsection 76-3-203.2(1), are exempt from the  
2363 provisions of this chapter.

2364 (b) Possession of a firearm on or about school premises is subject to the provisions of  
2365 Section 76-10-505.5.

2366 (2) Government entities, including a local authority or state entity, are subject to the  
2367 requirements of Title 53, Chapter 5a, Firearm Laws, but are otherwise exempt from the  
2368 provisions of this chapter.

2369 (3) Religious organizations, including religious organizations acting as an employer,  
2370 are exempt from, and are not subject to the provisions of this chapter.

2371 (4) Owner-occupied single family detached residential units and tenant-occupied single  
2372 family detached residential units are exempt from the provisions of this chapter.

2373 (5) A person who is subject to federal law that specifically forbids the presence of a  
2374 firearm ~~[from]~~ on property designated for motor vehicle parking, or a person who is subject to  
2375 Section 550 of the United States Department of Homeland Security Appropriations Act of  
2376 2007, Pub. L. No. 109-295 or regulations enacted in accordance with that section, is exempt  
2377 from Section 34-45-103 if:

2378 (a) providing alternative parking or a storage location under Subsection  
2379 34-45-103(2)(a) would pose an undue burden on the person; and

2380 (b) the person files a statement with the attorney general citing the federal law that  
2381 forbids the presence of a firearm and detailing the reasons why providing alternative parking or

2382 a storage location poses an undue burden.

2383 (6) A person who is subject to Section 550 of the United States Department of  
2384 Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295 or regulations enacted in  
2385 accordance with that section is exempt from this chapter if:

2386 (a) the person has attempted to provide alternative parking or a storage location in  
2387 accordance with Subsection [34-45-103\(2\)\(a\)](#);

2388 (b) the secretary of the federal Department of Homeland Security notifies the person  
2389 that the provision of alternative parking or a storage location causes the person to be out of  
2390 compliance with Section 550 of the United States Department of Homeland Security  
2391 Appropriations Act of 2007, Pub. L. No. 109-295 or regulations enacted in accordance with  
2392 that section and the person may be subject to punitive measures; and

2393 (c) the person files a detailed statement with the attorney general notifying the attorney  
2394 general of the facts under Subsections (6)(a) and (b).

2395 Section 32. Section [34A-2-213](#) is amended to read:

2396 **[34A-2-213. Coordination of benefits with health benefit plan -- Timely payment](#)**  
2397 **of claims.**

2398 (1) (a) This section applies if:

2399 (i) a health benefit plan paid medical claims under Section [31A-22-619.6](#); and

2400 (ii) the Labor Commission under [34A-2-801](#) issued an order or approved the terms of a  
2401 settlement agreement under Section [~~[34A-2-801](#)~~] [34A-2-420](#), which:

2402 (A) found that the medical claims are compensable under Title 34A, Chapter 2,  
2403 Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act; and

2404 (B) is final under Section [34A-2-801](#).

2405 (b) For purposes of this section, "workers' compensation carrier" means any of the  
2406 entities an employer may use to provide workers' compensation benefits for its employees  
2407 under Section [34A-2-201](#).

2408 (2) (a) The Labor Commission shall provide a health benefit plan with notice that an  
2409 application for hearing has been filed in accordance with Subsection [31A-22-619.6\(2\)\(a\)\(i\)](#) if

2410 either the employee or a health care provider requests that the commission send the notice.

2411 (b) The Labor Commission shall prepare and provide notice to an injured employee of  
2412 the employee's right to payment by the employee's health benefit plan under Section  
2413 [31A-22-619.6](#). The notice provided under this Subsection (2) shall include the process the  
2414 employee shall follow to obtain payment from a health benefit plan for a medical claim that is  
2415 the subject of an application for hearing under Section [34A-2-801](#).

2416 (3) (a) The Labor Commission shall, within three business days after the date on which  
2417 the order under Section [34A-2-801](#) or approval of the terms of a settlement agreement under  
2418 Section [34A-2-420](#) is signed by the administrative law judge [~~under Section [34A-2-801](#)~~], send  
2419 a copy of the order or terms of the settlement agreement to:

2420 (i) a health benefit plan that made payments under Section [31A-22-619.6](#);

2421 (ii) the workers' compensation carrier; and

2422 (iii) the injured worker.

2423 (b) The workers' compensation carrier shall, within 15 business days after the day on  
2424 which the Labor Commission's order under Section [34A-2-801](#) or settlement agreement under  
2425 Section [34A-2-420](#) is final [~~under the provisions of Section [34A-2-801](#)~~], pay:

2426 (i) the health benefit plan, in the amount the plan paid to the health care provider for  
2427 medical claims that are compensable under the order or the terms of the settlement agreement,  
2428 plus interest accrued at the rate of 8% per annum from the date the health benefit plan paid the  
2429 medical claims until the date the workers' compensation carrier reimburses the health benefit  
2430 plan, unless, in settlement negotiations, the health benefit plan agreed to waive, in whole or in  
2431 part, reimbursement for medical claims paid, interest accrued, or both; and

2432 (ii) the employee, in the amount of:

2433 (A) any co-payments, coinsurance, deductibles, or other out-of-pocket expenses paid or  
2434 incurred by the employee; and

2435 (B) interest accrued at the rate of 8% per annum from the date the employee paid the  
2436 expenses described in Subsection (3)(b)(ii)(A) until the date the workers' compensation carrier  
2437 reimburses the employee.

2438 (4) If the Labor Commission determines that a workers' compensation carrier did not  
2439 make the payment required by Subsection (3) within the time period required in Subsection (3),  
2440 the commissioner shall:

2441 (a) assess and collect a penalty from the workers' compensation carrier in:

2442 (i) the amount of \$500 for failure to pay the amount required by Subsections (3)(b)(i)  
2443 and (ii) within the period of time required by Subsections (3)(b)(i) and (ii); and

2444 (ii) an additional amount of \$500 for each calendar month:

2445 (A) that accrues after the penalty is assessed under Subsection (4)(a)(i); and

2446 (B) for which the amount required by Subsections (3)(b)(i) and (ii) are not paid;

2447 (b) deposit any penalties collected under this Subsection (4) into the Uninsured  
2448 Employers' Fund created in Section 34A-2-704; and

2449 (c) notify the Utah Insurance Department of the workers' compensation carrier's failure  
2450 to pay the health benefit plan or the employee in accordance with this section.

2451 (5) The penalty imposed by Subsection (4) is in addition to any action taken or penalty  
2452 imposed by the Utah Insurance Department under Title 31A, Insurance Code.

2453 (6) The commission may adopt administrative rules in accordance with Title 63G,  
2454 Chapter 3, Utah Administrative Rulemaking Act, to:

2455 (a) establish procedures for:

2456 (i) assessing and collecting penalties under Subsection (4); and

2457 (ii) providing notice as required by this section; and

2458 (b) enforce the provisions of this section.

2459 (7) This section sunsets in accordance with Section 63I-1-234.

2460 Section 33. Section 35A-3-103 is amended to read:

2461 **35A-3-103. Department responsibilities.**

2462 The department shall:

2463 (1) administer public assistance programs assigned by the Legislature and the  
2464 governor;

2465 (2) determine eligibility for public assistance programs in accordance with the

2466 requirements of this chapter;

2467           (3) cooperate with the federal government in the administration of public assistance

2468 programs;

2469           (4) administer state employment services in accordance with Section [35A-3-115](#);

2470           (5) provide for the compilation of necessary or desirable information, statistics, and

2471 reports;

2472           (6) perform other duties and functions required by law;

2473           (7) monitor the application of eligibility policy;

2474           (8) develop personnel training programs for effective and efficient operation of the

2475 programs administered by the department;

2476           (9) provide refugee resettlement services in accordance with Section [~~35A-3-116~~]

2477 [35A-3-701](#);

2478           (10) provide child care assistance for children in accordance with Part 2, Office of

2479 Child Care; and

2480           (11) provide services that enable an applicant or recipient to qualify for affordable

2481 housing in cooperation with:

2482           (a) the Utah Housing Corporation;

2483           (b) the Housing and Community Development Division; and

2484           (c) local housing authorities.

2485 Section 34. Section **35A-8-1705** is amended to read:

2486 **35A-8-1705. Navajo Revitalization Fund Board.**

2487           (1) There is created within the division the Navajo Revitalization Fund Board

2488 composed of five members as follows:

2489           (a) the governor or the governor's designee;

2490           (b) the two members of the San Juan County commission whose districts include

2491 portions of the Navajo Reservation;

2492           (c) the chair of the Navajo Utah Commission or a member of the commission

2493 designated by the chair of the Navajo Utah Commission; and

2494 (d) beginning July 1, 2008, a president of a Utah Navajo Chapter or an individual  
2495 designated by the president under an annual rotation system of Utah Navajo Chapters as  
2496 follows:

2497 (i) the president of a Utah Navajo Chapter shall serve for one year;

2498 (ii) the Utah Navajo Chapter is rotated in alphabetical order as provided in Subsection  
2499 [35A-8-1702\(7\)](#), except that the rotation will begin on July 1, 2008, with the Dennehotso  
2500 Chapter;

2501 (iii) if the president of a Utah Navajo Chapter under Subsection (1)(d)(ii) is the same  
2502 individual as the individual listed in Subsection (1)(c):

2503 (A) that Utah Navajo Chapter is skipped as part of that rotation; and

2504 (B) the president of the next Utah Navajo Chapter in the alphabetical rotation shall  
2505 serve on the board.

2506 (2) The term of office for a member of the board described in Subsections (1)(a)  
2507 through (c) runs concurrently with the term of office for the governor, county commissioner, or  
2508 member of the Navajo Utah Commission.

2509 (3) (a) The governor, or the governor's designee, is the chair of the board.

2510 (b) The chair shall call necessary meetings.

2511 (4) A member may not receive compensation or benefits for the member's service, but  
2512 may receive per diem and travel expenses in accordance with:

2513 (a) Section [63A-3-106](#);

2514 (b) Section [63A-3-107](#); and

2515 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and  
2516 [63A-3-107](#).

2517 (5) The per diem and travel expenses permitted under Subsection (4) may be included  
2518 as costs of administration of the revitalization fund.

2519 (6) Four board members are a quorum.

2520 (7) An affirmative vote of each member of the board present at a meeting when a  
2521 quorum is present is required for a board decision related to money in or disbursed from the

2522 revitalization fund.

2523 Section 35. Section **41-6a-1616** is amended to read:

2524 **41-6a-1616. High intensity beams -- Red or blue lights -- Flashing lights -- Color**  
2525 **of rear lights and reflectors.**

2526 (1) (a) Except as provided under Subsection (1)(b), under the conditions specified  
2527 under Subsection **41-6a-1603**(1)(a), a lighted lamp or illuminating device on a vehicle, which  
2528 projects a beam of light of an intensity greater than 300 candlepower, shall be directed so that  
2529 no part of the high intensity portion of the beam will strike the level of the roadway on which  
2530 the vehicle stands at a distance of more than 75 feet from the vehicle.

2531 (b) The provisions of Subsection (1)(a) do not apply to head lamps, spot lamps,  
2532 auxiliary lamps, flashing turn signals, hazard warning lamps, and school bus warning lamps.

2533 (c) A motor vehicle on a highway may not have more than a total of four lamps lighted  
2534 on the front of the vehicle including head lamps, auxiliary lamps, spot lamps, or any other lamp  
2535 if the lamp projects a beam of an intensity greater than 300 candlepower.

2536 (2) (a) Except for an authorized emergency vehicle described in Section **41-6a-1601**, a  
2537 school bus described in Section **41-6a-1302**, or a media production vehicle used in accordance  
2538 with Section **41-6a-1718**, a person may not operate or move any vehicle or equipment on a  
2539 highway with a lamp or device capable of displaying a red light that is visible from directly in  
2540 front of the center of the vehicle.

2541 (b) Except for a law enforcement vehicle, or a media production vehicle used in  
2542 accordance with Section **41-6a-1718**, a person may not operate or move any vehicle or  
2543 equipment on a highway with a lamp or device capable of displaying a blue light that is visible  
2544 from directly in front of the center of the vehicle.

2545 (3) A person may not use flashing lights on a vehicle except for:

2546 (a) taillights of bicycles described in Section **41-6a-1114**;

2547 (b) authorized emergency vehicles described in Section **41-6a-1601**;

2548 (c) turn signals described in Section **41-6a-1604**;

2549 (d) hazard warning lights described in Sections **41-6a-1608** and **41-6a-1611**;

2550 (e) school bus flashing lights described in Section [41-6a-1302](#);  
2551 (f) vehicles engaged in highway construction or maintenance described in Section  
2552 [41-6a-1617](#);  
2553 (g) a media production vehicle used in accordance with Section [41-6a-1718](#); and  
2554 (h) a continuously flashing light system under Section [41-6a-1604](#).  
2555 (4) Except for an authorized emergency vehicle described in Section [41-6a-1601](#), or a  
2556 media production vehicle used in accordance with Section [~~41-7a-1718~~] [41-6a-1718](#), a person  
2557 may not use a rotating light on any vehicle.

2558 (5) A violation of this section is an infraction.

2559 Section 36. Section **46-4-503** is amended to read:

2560 **46-4-503. Government products and services provided electronically.**

2561 (1) Notwithstanding Section [46-4-501](#), a state governmental agency that administers  
2562 one or more of the following transactions shall allow those transactions to be conducted  
2563 electronically:

2564 (a) an application for or renewal of a professional or occupational license issued under  
2565 Title 58, Occupations and Professions;

2566 (b) the renewal of a drivers license;

2567 (c) an application for a hunting or fishing license;

2568 (d) the filing of:

2569 (i) a return under Title 59, Chapter 10, Individual Income Tax Act, or Title 59, Chapter  
2570 12, Sales and Use Tax Act;

2571 (ii) a court document, as defined by the Judicial Council; or

2572 (iii) a document under Title 70A, Uniform Commercial Code;

2573 (e) a registration for:

2574 (i) a product; or

2575 (ii) a brand;

2576 (f) a renewal of a registration of a motor vehicle;

2577 (g) a registration under:

- 2578 (i) Title 16, Corporations;
- 2579 (ii) Title 42, Names; or
- 2580 (iii) Title 48, Partnership - Unincorporated Business [~~Entity Act~~] Entities; or
- 2581 (h) submission of an application for benefits:
- 2582 (i) under Title 35A, Chapter 3, Employment Support Act;
- 2583 (ii) under Title 35A, Chapter 4, Employment Security Act; or
- 2584 (iii) related to accident and health insurance.
- 2585 (2) The state system of public education, in coordination with the Utah Education and
- 2586 Telehealth Network, shall make reasonable progress toward making the following services
- 2587 available electronically:
- 2588 (a) secure access by parents and students to student grades and progress reports;
- 2589 (b) email communications with:
- 2590 (i) teachers;
- 2591 (ii) parent-teacher associations; and
- 2592 (iii) school administrators;
- 2593 (c) access to school calendars and schedules; and
- 2594 (d) teaching resources that may include:
- 2595 (i) teaching plans;
- 2596 (ii) curriculum guides; and
- 2597 (iii) media resources.
- 2598 (3) A state governmental agency shall:
- 2599 (a) in carrying out the requirements of this section, take reasonable steps to ensure the
- 2600 security and privacy of records that are private or controlled as defined by Title 63G, Chapter 2,
- 2601 Government Records Access and Management Act;
- 2602 (b) in addition to those transactions listed in Subsections (1) and (2), determine any
- 2603 additional services that may be made available to the public through electronic means; and
- 2604 (c) as part of the agency's information technology plan required by Section [63F-1-204](#),
- 2605 report on the progress of compliance with Subsections (1) through (3).

2606 (4) Notwithstanding the other provisions of this part, a state governmental agency is  
2607 not required by this part to conduct a transaction electronically if:

2608 (a) conducting the transaction electronically is not required by federal law; and

2609 (b) conducting the transaction electronically is:

2610 (i) impractical;

2611 (ii) unreasonable; or

2612 (iii) not permitted by laws pertaining to privacy or security.

2613 (5) (a) For purposes of this Subsection (5), "one-stop shop" means the consolidation of  
2614 access to diverse services and agencies at one location including virtual colocation.

2615 (b) State agencies that provide services or offer direct assistance to the business  
2616 community shall participate in the establishment, maintenance, and enhancement of an  
2617 integrated Utah business web portal known as Business.utah.gov. The purpose of the business  
2618 web portal is to provide "one-stop shop" assistance to businesses.

2619 (c) State agencies shall partner with other governmental and nonprofit agencies whose  
2620 primary mission is to provide services or offer direct assistance to the business community in  
2621 Utah in fulfilling the requirements of this section.

2622 (d) The following state entities shall comply with the provisions of this Subsection (5):

2623 (i) Governor's Office of Economic Development, which shall serve as the managing  
2624 partner for the website;

2625 (ii) Department of Workforce Services;

2626 (iii) Department of Commerce;

2627 (iv) Tax Commission;

2628 (v) Department of Administrative Services - Division of Purchasing and General  
2629 Services, including other state agencies operating under a grant of authority from the division  
2630 to procure goods and services in excess of \$5,000;

2631 (vi) Department of Agriculture;

2632 (vii) Department of Natural Resources; and

2633 (viii) other state agencies that provide services or offer direct assistance to the business

2634 sector.

2635 (e) The business services available on the business web portal may include:

2636 (i) business life cycle information;

2637 (ii) business searches;

2638 (iii) employment needs and opportunities;

2639 (iv) motor vehicle registration;

2640 (v) permit applications and renewal;

2641 (vi) tax information;

2642 (vii) government procurement bid notifications;

2643 (viii) general business information;

2644 (ix) business directories; and

2645 (x) business news.

2646 Section 37. Section **53-8-210** is amended to read:

2647 **53-8-210. Enforcement of inspection requirements.**

2648 (1) A person operating a vehicle shall submit the vehicle to a safety inspection when  
2649 required to do so by a peace officer.

2650 (2) (a) An owner or driver, upon receiving a notice as provided in Section [53-8-209](#),  
2651 shall within five days secure a safety inspection certificate, which shall be issued in duplicate,  
2652 one copy to be retained by the owner or driver and the other copy to be forwarded to the  
2653 division.

2654 (b) In lieu of compliance with this subsection, the vehicle may not be operated, except  
2655 as provided in Subsection (3).

2656 (3) (a) A person may not operate any vehicle after receiving a notice from a peace  
2657 officer that the vehicle is in need of repair or adjustment, except that a peace officer may allow  
2658 the vehicle to be driven to the residence or place of business of the owner or driver or to the  
2659 nearest garage where repairs are available if driving the vehicle is not excessively dangerous.

2660 (b) The vehicle may not be operated again on the highways until its equipment has  
2661 been placed in proper repair and adjustment and otherwise conforms to the requirements of this

2662 part and Title 41, Chapter [~~6, Traffic Rules and Regulations~~] 6a, Traffic Code, and a safety  
2663 inspection certificate is obtained as promptly as possible.

2664 (4) If repair or adjustment of any vehicle or its equipment is necessary, the owner of  
2665 the vehicle may obtain repair or adjustment at any place he may choose.

2666 Section 38. Section **53A-1-301** is amended to read:

2667 **53A-1-301. Appointment -- Qualifications -- Duties.**

2668 (1) (a) The State Board of Education shall appoint a superintendent of public  
2669 instruction, hereinafter called the state superintendent, who is the executive officer of the board  
2670 and serves at the pleasure of the board.

2671 (b) The board shall appoint the state superintendent on the basis of outstanding  
2672 professional qualifications.

2673 (c) The state superintendent shall administer all programs assigned to the State Board  
2674 of Education in accordance with the policies and the standards established by the board.

2675 (2) The State Board of Education shall, with the appointed superintendent, develop a  
2676 statewide education strategy focusing on core academics, including the development of:

2677 (a) core standards for Utah public schools and graduation requirements;

2678 (b) a process to select model instructional materials that best correlate to the core  
2679 standards for Utah public schools and graduation requirements that are supported by generally  
2680 accepted scientific standards of evidence;

2681 (c) professional development programs for teachers, superintendents, and principals;

2682 (d) model remediation programs;

2683 (e) a model method for creating individual student learning targets, and a method of  
2684 measuring an individual student's performance toward those targets;

2685 (f) progress-based assessments for ongoing performance evaluations of districts and  
2686 schools;

2687 (g) incentives to achieve the desired outcome of individual student progress in core  
2688 academics, and which do not create disincentives for setting high goals for the students;

2689 (h) an annual report card for school and district performance, measuring learning and

2690 reporting progress-based assessments;

2691       (i) a systematic method to encourage innovation in schools and school districts as they

2692 strive to achieve improvement in their performance; and

2693       (j) a method for identifying and sharing best demonstrated practices across districts and

2694 schools.

2695       (3) The superintendent shall perform duties assigned by the board, including the

2696 following:

2697       (a) investigating all matters pertaining to the public schools;

2698       (b) adopting and keeping an official seal to authenticate the superintendent's official

2699 acts;

2700       (c) holding and conducting meetings, seminars, and conferences on educational topics;

2701       (d) presenting to the governor and the Legislature each December a report of the public

2702 school system for the preceding year to include:

2703       (i) data on the general condition of the schools with recommendations considered

2704 desirable for specific programs;

2705       (ii) a complete statement of fund balances;

2706       (iii) a complete statement of revenues by fund and source;

2707       (iv) a complete statement of adjusted expenditures by fund, the status of bonded

2708 indebtedness, the cost of new school plants, and school levies;

2709       (v) a complete statement of state funds allocated to each school district and charter

2710 school by source, including supplemental appropriations, and a complete statement of

2711 expenditures by each school district and charter school, including supplemental appropriations,

2712 by function and object as outlined in the [U.S.] United States Department of Education

2713 publication "Financial Accounting for Local and State School Systems";

2714       (vi) a complete statement, by school district and charter school, of the amount of and

2715 percentage increase or decrease in expenditures from the previous year attributed to:

2716       (A) wage increases, with expenditure data for base salary adjustments identified

2717 separately from step and lane expenditures;

- 2718 (B) medical and dental premium cost adjustments; and  
2719 (C) adjustments in the number of teachers and other staff;  
2720 (vii) a statement that includes data on:  
2721 (A) fall enrollments;  
2722 (B) average membership;  
2723 (C) high school graduates;  
2724 (D) licensed and classified employees, including data reported by school districts on  
2725 educator ratings pursuant to Section [~~53A-8a-405~~] 53A-8a-410;  
2726 (E) pupil-teacher ratios;  
2727 (F) average class sizes calculated in accordance with State Board of Education rules  
2728 adopted under Subsection 53A-3-602.5(4);  
2729 (G) average salaries;  
2730 (H) applicable private school data; and  
2731 (I) data from standardized norm-referenced tests in grades 5, 8, and 11 on each school  
2732 and district;  
2733 (viii) statistical information regarding incidents of delinquent activity in the schools or  
2734 at school-related activities with separate categories for:  
2735 (A) alcohol and drug abuse;  
2736 (B) weapon possession;  
2737 (C) assaults; and  
2738 (D) arson;  
2739 (ix) information about:  
2740 (A) the development and implementation of the strategy of focusing on core  
2741 academics;  
2742 (B) the development and implementation of competency-based education and  
2743 progress-based assessments; and  
2744 (C) the results being achieved under Subsections (3)(d)(ix)(A) and (B), as measured by  
2745 individual progress-based assessments and a comparison of Utah students' progress with the

2746 progress of students in other states using standardized norm-referenced tests as benchmarks;  
2747 and

2748 (x) other statistical and financial information about the school system which the state  
2749 superintendent considers pertinent;

2750 (e) collecting and organizing education data into an automated decision support system  
2751 to facilitate school district and school improvement planning, accountability reporting,  
2752 performance recognition, and the evaluation of educational policy and program effectiveness to  
2753 include:

2754 (i) data that are:

2755 (A) comparable across schools and school districts;

2756 (B) appropriate for use in longitudinal studies; and

2757 (C) comprehensive with regard to the data elements required under applicable state or  
2758 federal law or state board rule;

2759 (ii) features that enable users, most particularly school administrators, teachers, and  
2760 parents, to:

2761 (A) retrieve school and school district level data electronically;

2762 (B) interpret the data visually; and

2763 (C) draw conclusions that are statistically valid; and

2764 (iii) procedures for the collection and management of education data that:

2765 (A) require the state superintendent of public instruction to:

2766 (I) collaborate with school districts in designing and implementing uniform data  
2767 standards and definitions;

2768 (II) undertake or sponsor research to implement improved methods for analyzing  
2769 education data;

2770 (III) provide for data security to prevent unauthorized access to or contamination of the  
2771 data; and

2772 (IV) protect the confidentiality of data under state and federal privacy laws; and

2773 (B) require all school districts and schools to comply with the data collection and

2774 management procedures established under Subsection (3)(e);

2775 (f) administering and implementing federal educational programs in accordance with  
2776 Title 53A, Chapter 1, Part 9, Implementing Federal or National Education Programs Act; and

2777 (g) with the approval of the board, preparing and submitting to the governor a budget  
2778 for the board to be included in the budget that the governor submits to the Legislature.

2779 (4) The state superintendent shall distribute funds deposited in the Autism Awareness  
2780 Restricted Account created in Section 53A-1-304 in accordance with the requirements of  
2781 Section 53A-1-304.

2782 (5) Upon leaving office, the state superintendent shall deliver to the state  
2783 superintendent's successor all books, records, documents, maps, reports, papers, and other  
2784 articles pertaining to the state superintendent's office.

2785 (6) (a) For the purpose of Subsection (3)(d)(vii):

2786 (i) the pupil-teacher ratio for a school shall be calculated by dividing the number of  
2787 students enrolled in a school by the number of full-time equivalent teachers assigned to the  
2788 school, including regular classroom teachers, school-based specialists, and special education  
2789 teachers;

2790 (ii) the pupil-teacher ratio for a school district shall be the median pupil-teacher ratio of  
2791 the schools within a school district;

2792 (iii) the pupil-teacher ratio for charter schools aggregated shall be the median  
2793 pupil-teacher ratio of charter schools in the state; and

2794 (iv) the pupil-teacher ratio for the state's public schools aggregated shall be the median  
2795 pupil-teacher ratio of public schools in the state.

2796 (b) The printed copy of the report required by Subsection (3)(d) shall:

2797 (i) include the pupil-teacher ratio for:

2798 (A) each school district;

2799 (B) the charter schools aggregated; and

2800 (C) the state's public schools aggregated; and

2801 (ii) indicate the Internet website where pupil-teacher ratios for each school in the state

2802 may be accessed.

2803 Section 39. Section **53A-15-1504** is amended to read:

2804 **53A-15-1504. Background checks for licensed educators.**

2805 The State Board of Education shall:

2806 (1) require a license applicant to submit to a criminal background check and ongoing  
2807 monitoring as a condition for licensing;

2808 (2) collect the following from an applicant:

2809 (a) personal identifying information;

2810 (b) a fee described in Subsection **53-10-108**(15); and

2811 (c) consent, on a form specified by the State Board of Education, for:

2812 (i) an initial background check upon submission of the application;

2813 (ii) retention of personal identifying information for ongoing monitoring through  
2814 registration with the systems described in Section **53A-15-1505**; and

2815 (iii) disclosure of any criminal history information to the individual's employing LEA  
2816 or qualifying private school;

2817 (3) submit an applicant's personal identifying information, including fingerprints, to the  
2818 bureau for:

2819 (a) an initial background check; and

2820 (b) ongoing monitoring through registration with the systems described in Section  
2821 **53A-15-1505** if the results of the initial background check do not contain disqualifying  
2822 criminal history information as determined by the State Board of Education in accordance with  
2823 Section **53A-15-1506**;

2824 (4) identify the appropriate privacy risk mitigation strategy that will be used to ensure  
2825 that the [~~board~~] State Board of Education only receives notifications for individuals with whom  
2826 the State Board of Education maintains an authorizing relationship;

2827 (5) notify the employing LEA or qualifying private school upon receipt of any criminal  
2828 history information reported on a licensed educator employed by the LEA or qualifying private  
2829 school; and

2830 (6) (a) collect the information described in Subsection (2) from individuals who were  
2831 licensed prior to July 1, 2015, by the individual's next license renewal date; and

2832 (b) submit the information to the bureau for ongoing monitoring through registration  
2833 with the systems described in Section [53A-15-1505](#).

2834 Section 40. Section **53A-15-1508** is amended to read:

2835 **53A-15-1508. Update criminal background check rules and policies.**

2836 On or before September 1, 2015:

2837 (1) the [~~board~~] State Board of Education shall update the [~~board's~~] State Board of  
2838 Education's criminal background check rules consistent with this part; and

2839 (2) an LEA shall update the LEA's criminal background check policies consistent with  
2840 this part.

2841 Section 41. Section **53A-15-1509** is amended to read:

2842 **53A-15-1509. Training provided to authorized entities.**

2843 The [~~board~~] State Board of Education shall collaborate with the bureau to provide  
2844 training to authorized entities on the provisions of this part.

2845 Section 42. Section **57-8-8.1** is amended to read:

2846 **57-8-8.1. Equal treatment by rules required -- Limits on rules.**

2847 (1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated unit  
2848 owners similarly.

2849 (b) Notwithstanding Subsection (1)(a), a rule may:

2850 (i) vary according to the level and type of service that the association of unit owners  
2851 provides to unit owners; and

2852 (ii) differ between residential and nonresidential uses.

2853 (2) (a) If a unit owner owns a rental unit and is in compliance with the association of  
2854 unit owners' governing documents and any rule that the association of unit owners adopts under  
2855 Subsection (4), a rule may not treat the unit owner differently because the unit owner owns a  
2856 rental unit.

2857 (b) Notwithstanding Subsection (2)(a), a rule may:

2858 (i) limit or prohibit a rental unit owner from using the common areas for purposes other  
2859 than attending an association meeting or managing the rental unit;

2860 (ii) if the rental unit owner retains the right to use the association of unit owners'  
2861 common areas, even occasionally, charge a rental unit owner a fee to use the common areas; or

2862 (iii) include a provision in the association of unit owners' governing documents that:

2863 (A) requires each tenant of a rental unit to abide by the terms of the governing  
2864 documents; and

2865 (B) holds the tenant and the rental unit owner jointly and severally liable for a violation  
2866 of a provision of the governing documents.

2867 (3) (a) A rule may not interfere with the freedom of a unit owner to determine the  
2868 composition of the unit owner's household.

2869 (b) Notwithstanding Subsection (3)(a), an association of unit owners may:

2870 (i) require that all occupants of a dwelling be members of a single housekeeping unit;

2871 or

2872 (ii) limit the total number of occupants permitted in each residential dwelling on the  
2873 basis of the residential dwelling's:

2874 (A) size and facilities; and

2875 (B) fair use of the common areas.

2876 (4) Unless contrary to a declaration, a rule may require a minimum lease term.

2877 (5) Unless otherwise provided in the declaration, an association of unit owners may by  
2878 rule:

2879 (a) regulate the use, maintenance, repair, replacement, and modification of common  
2880 areas;

2881 (b) impose and receive any payment, fee, or charge for:

2882 (i) the use, rental, or operation of the common areas, except limited common areas; and

2883 (ii) a service provided to a unit owner;

2884 (c) impose a charge for a late payment of an assessment; or

2885 (d) provide for the indemnification of the association of unit owners' officers and

2886 [~~board~~] management committee consistent with Title 16, Chapter 6a, Utah Revised Nonprofit  
2887 Corporation Act.

2888 (6) A rule shall be reasonable.

2889 (7) A declaration, or an amendment to a declaration, may vary any of the requirements  
2890 of Subsections (1) through (5), except Subsection (1)(b)(ii).

2891 (8) This section applies to an association of unit owners regardless of when the  
2892 association of unit owners is created.

2893 Section 43. Section **57-16a-202** is amended to read:

2894 **57-16a-202. Helpline administration.**

2895 (1) A helpline is created to assist a resident, a mobile home owner, or a park owner  
2896 with disputes related to the act.

2897 (2) The University of Utah S.J. Quinney College of Law shall administer the helpline  
2898 in accordance with the provisions of this chapter.

2899 (3) In administering the helpline, the S.J. Quinney College of Law shall:

2900 (a) establish a phone number for the [~~hotline~~] helpline; and

2901 (b) create a law clinic that consists of:

2902 (i) a helpline administrator who is employed by the S.J. Quinney College of Law and is  
2903 an active member of the Utah State Bar;

2904 (ii) one or more supervised students; and

2905 (iii) if necessary, one or more assisting attorneys.

2906 (4) The helpline administrator, a supervised student, or an assisting attorney shall:

2907 (a) receive and respond to calls made through the helpline;

2908 (b) inform a helpline caller of the rights, responsibilities, and remedies described in the  
2909 act;

2910 (c) receive complaints from a helpline caller that allege a violation of the act;

2911 (d) create a record of each call that includes:

2912 (i) whether the caller is a resident, a mobile home owner, or a park owner;

2913 (ii) the subject of the call, including whether the call alleges a violation of the act;

2914 (iii) if the call alleges a violation of the act, information regarding whether the  
2915 respondent was contacted;  
2916 (iv) the services provided to the caller, if any; and  
2917 (v) the outcome of the dispute, if known; and  
2918 (e) maintain a record described in Subsection (4)(d) for at least one year after the day  
2919 on which the record is created.

2920 (5) The helpline administrator shall, beginning in 2016, on or before November 30 of  
2921 each year, submit to the Political Subdivisions Interim Committee a report that, for the 12  
2922 months before the day on which the helpline administrator submits the report, states:

2923 (a) the number of calls that the helpline administrator, a supervised student, or an  
2924 assisting attorney received through the helpline;

2925 (b) a brief summary of each call, including:

2926 (i) whether a resident, a mobile home owner, or a park owner made the call;

2927 (ii) the subject of the call;

2928 (iii) the nature of any service provided to the caller; and

2929 (iv) the outcome of the matter, if known; and

2930 (c) any recommendations regarding changes to the helpline or the act.

2931 Section 44. Section **58-37-8** is amended to read:

2932 **58-37-8. Prohibited acts -- Penalties.**

2933 (1) Prohibited acts A -- Penalties:

2934 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and  
2935 intentionally:

2936 (i) produce, manufacture, or dispense, or to possess with intent to produce,  
2937 manufacture, or dispense, a controlled or counterfeit substance;

2938 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or  
2939 arrange to distribute a controlled or counterfeit substance;

2940 (iii) possess a controlled or counterfeit substance with intent to distribute; or

2941 (iv) engage in a continuing criminal enterprise where:

2942 (A) the person participates, directs, or engages in conduct [~~which~~] that results in any  
2943 violation of any provision of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah  
2944 Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled  
2945 Substance Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and

2946 (B) the violation is a part of a continuing series of two or more violations of Title 58,  
2947 Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,  
2948 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,  
2949 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or  
2950 more persons with respect to whom the person occupies a position of organizer, supervisor, or  
2951 any other position of management.

2952 (b) Any person convicted of violating Subsection (1)(a) with respect to:

2953 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled  
2954 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second  
2955 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or  
2956 subsequent conviction is guilty of a first degree felony;

2957 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or  
2958 marijuana, or a substance listed in Section [58-37-4.2](#) is guilty of a third degree felony, and  
2959 upon a second or subsequent conviction is guilty of a second degree felony; or

2960 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a  
2961 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree  
2962 felony.

2963 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)  
2964 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier  
2965 of fact finds a firearm as defined in Section [76-10-501](#) was used, carried, or possessed on his  
2966 person or in his immediate possession during the commission or in furtherance of the offense,  
2967 the court shall additionally sentence the person convicted for a term of one year to run  
2968 consecutively and not concurrently; and the court may additionally sentence the person  
2969 convicted for an indeterminate term not to exceed five years to run consecutively and not

2970 concurrently.

2971 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
2972 felony punishable by imprisonment for an indeterminate term of not less than seven years and  
2973 which may be for life. Imposition or execution of the sentence may not be suspended, and the  
2974 person is not eligible for probation.

2975 (2) Prohibited acts B -- Penalties:

2976 (a) It is unlawful:

2977 (i) for any person knowingly and intentionally to possess or use a controlled substance  
2978 analog or a controlled substance, unless it was obtained under a valid prescription or order,  
2979 directly from a practitioner while acting in the course of the person's professional practice, or as  
2980 otherwise authorized by this chapter;

2981 (ii) for any owner, tenant, licensee, or person in control of any building, room,  
2982 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to  
2983 be occupied by persons unlawfully possessing, using, or distributing controlled substances in  
2984 any of those locations; or

2985 (iii) for any person knowingly and intentionally to possess an altered or forged  
2986 prescription or written order for a controlled substance.

2987 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

2988 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

2989 or

2990 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty  
2991 of a class A misdemeanor on a first or second conviction, and on a third or subsequent  
2992 conviction is guilty of a third degree felony.

2993 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a  
2994 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater  
2995 penalty than provided in this Subsection (2).

2996 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
2997 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section

2998 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the  
2999 person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the  
3000 person is guilty of a third degree felony.

3001 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior  
3002 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or  
3003 any public jail or other place of confinement shall be sentenced to a penalty one degree greater  
3004 than provided in Subsection (2)(b), and if the conviction is with respect to controlled  
3005 substances as listed in:

3006 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
3007 indeterminate term as provided by law, and:

3008 (A) the court shall additionally sentence the person convicted to a term of one year to  
3009 run consecutively and not concurrently; and

3010 (B) the court may additionally sentence the person convicted for an indeterminate term  
3011 not to exceed five years to run consecutively and not concurrently; and

3012 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
3013 indeterminate term as provided by law, and the court shall additionally sentence the person  
3014 convicted to a term of six months to run consecutively and not concurrently.

3015 (f) Any person convicted of violating Subsection (2)(a)(ii) or(iii) is:

3016 (i) on a first conviction, guilty of a class B misdemeanor;

3017 (ii) on a second conviction, guilty of a class A misdemeanor; and

3018 (iii) on a third or subsequent conviction, guilty of a third degree felony.

3019 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not  
3020 amounting to a violation of Section 76-5-207:

3021 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's  
3022 body any measurable amount of a controlled substance; and

3023 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,  
3024 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

3025 (h) A person who violates Subsection (2)(g) by having in the person's body:

3026 (i) a controlled substance classified under Schedule I, other than those described in  
3027 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second  
3028 degree felony;

3029 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
3030 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third  
3031 degree felony; or

3032 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class  
3033 A misdemeanor.

3034 (i) A person is guilty of a separate offense for each victim suffering serious bodily  
3035 injury or death as a result of the person's negligent driving in violation of Subsection  
3036 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

3037 (3) Prohibited acts C -- Penalties:

3038 (a) It is unlawful for any person knowingly and intentionally:

3039 (i) to use in the course of the manufacture or distribution of a controlled substance a  
3040 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
3041 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a  
3042 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized  
3043 person;

3044 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
3045 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
3046 be attempting to acquire or obtain possession of, or to procure the administration of any  
3047 controlled substance by misrepresentation or failure by the person to disclose receiving any  
3048 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
3049 prescription or written order for a controlled substance, or the use of a false name or address;

3050 (iii) to make any false or forged prescription or written order for a controlled substance,  
3051 or to utter the same, or to alter any prescription or written order issued or written under the  
3052 terms of this chapter; or

3053 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed

3054 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or  
3055 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
3056 so as to render any drug a counterfeit controlled substance.

3057 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
3058 misdemeanor.

3059 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
3060 degree felony.

3061 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

3062 (4) Prohibited acts D -- Penalties:

3063 (a) Notwithstanding other provisions of this section, a person not authorized under this  
3064 chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or  
3065 Section 58-37b-4 is upon conviction subject to the penalties and classifications under this  
3066 Subsection (4) if the trier of fact finds the act is committed:

3067 (i) in a public or private elementary or secondary school or on the grounds of any of  
3068 those schools during the hours of 6 a.m. through 10 p.m.;

3069 (ii) in a public or private vocational school or postsecondary institution or on the  
3070 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

3071 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or  
3072 facility's hours of operation;

3073 (iv) in a public park, amusement park, arcade, or recreation center when the public or  
3074 amusement park, arcade, or recreation center is open to the public;

3075 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;

3076 (vi) in or on the grounds of a library when the library is open to the public;

3077 (vii) within any area that is within 100 feet of any structure, facility, or grounds  
3078 included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

3079 (viii) in the presence of a person younger than 18 years of age, regardless of where the  
3080 act occurs; or

3081 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or

3082 distribution of a substance in violation of this section to an inmate or on the grounds of any  
3083 correctional facility as defined in Section 76-8-311.3.

3084 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
3085 and shall be imprisoned for a term of not less than five years if the penalty that would  
3086 otherwise have been established but for this Subsection (4) would have been a first degree  
3087 felony.

3088 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
3089 not eligible for probation.

3090 (c) If the classification that would otherwise have been established would have been  
3091 less than a first degree felony but for this Subsection (4), a person convicted under this  
3092 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that  
3093 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

3094 (d) (i) If the violation is of Subsection (4)(a)(ix):

3095 (A) the person may be sentenced to imprisonment for an indeterminate term as  
3096 provided by law, and the court shall additionally sentence the person convicted for a term of  
3097 one year to run consecutively and not concurrently; and

3098 (B) the court may additionally sentence the person convicted for an indeterminate term  
3099 not to exceed five years to run consecutively and not concurrently; and

3100 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
3101 the mental state required for the commission of an offense, directly or indirectly solicits,  
3102 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
3103 violation of Subsection (4)(a)(ix).

3104 (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
3105 mistakenly believed the individual to be 18 years of age or older at the time of the offense or  
3106 was unaware of the individual's true age; nor that the actor mistakenly believed that the  
3107 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
3108 the location where the act occurred was as described in Subsection (4)(a).

3109 (5) Any violation of this chapter for which no penalty is specified is a class B

3110 misdemeanor.

3111           (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of  
3112 guilty or no contest to a violation or attempted violation of this section or a plea [~~which~~] that is  
3113 held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a  
3114 conviction, even if the charge has been subsequently reduced or dismissed in accordance with  
3115 the plea in abeyance agreement.

3116           (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a  
3117 conviction that is:

3118           (i) from a separate criminal episode than the current charge; and

3119           (ii) from a conviction that is separate from any other conviction used to enhance the  
3120 current charge.

3121           (7) A person may be charged and sentenced for a violation of this section,  
3122 notwithstanding a charge and sentence for a violation of any other section of this chapter.

3123           (8) (a) Any penalty imposed for violation of this section is in addition to, and not in  
3124 lieu of, any civil or administrative penalty or sanction authorized by law.

3125           (b) Where violation of this chapter violates a federal law or the law of another state,  
3126 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
3127 prosecution in this state.

3128           (9) In any prosecution for a violation of this chapter, evidence or proof [~~which~~] that  
3129 shows a person or persons produced, manufactured, possessed, distributed, or dispensed a  
3130 controlled substance or substances, is prima facie evidence that the person or persons did so  
3131 with knowledge of the character of the substance or substances.

3132           (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
3133 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or  
3134 administering controlled substances or from causing the substances to be administered by an  
3135 assistant or orderly under the veterinarian's direction and supervision.

3136           (11) Civil or criminal liability may not be imposed under this section on:

3137           (a) any person registered under this chapter who manufactures, distributes, or possesses

3138 an imitation controlled substance for use as a placebo or investigational new drug by a  
3139 registered practitioner in the ordinary course of professional practice or research; or

3140 (b) any law enforcement officer acting in the course and legitimate scope of the  
3141 officer's employment.

3142 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,  
3143 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide  
3144 traditional ceremonial purposes in connection with the practice of a traditional Indian religion  
3145 as defined in Subsection 58-37-2(1)(w).

3146 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
3147 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,  
3148 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in  
3149 connection with the practice of a traditional Indian religion.

3150 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
3151 defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to  
3152 trial.

3153 (ii) The notice shall include the specific claims of the affirmative defense.

3154 (iii) The court may waive the notice requirement in the interest of justice for good  
3155 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

3156 (d) The defendant shall establish the affirmative defense under this Subsection (12) by  
3157 a preponderance of the evidence. If the defense is established, it is a complete defense to the  
3158 charges.

3159 (13) (a) It is an affirmative defense that the person produced, possessed, or  
3160 administered a controlled substance listed in Section 58-37-4.2 if the person:

3161 (i) was engaged in medical research; and

3162 (ii) was a holder of a valid license to possess controlled substances under Section  
3163 58-37-6.

3164 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed  
3165 a controlled substance listed in Section 58-37-4.2.

3166 (14) It is an affirmative defense that the person possessed, in the person's body, a  
3167 controlled substance listed in Section 58-37-4.2 if:

3168 (a) the person was the subject of medical research conducted by a holder of a valid  
3169 license to possess controlled substances under Section 58-37-6; and

3170 (b) the substance was administered to the person by the medical researcher.

3171 (15) The application of any increase in penalty under this section to a violation of  
3172 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This  
3173 Subsection (15) takes precedence over any conflicting provision of this section.

3174 (16) (a) It is an affirmative defense to an allegation of the commission of an offense  
3175 listed in Subsection (16)(b) that the person:

3176 (i) reasonably believes that the person or another person is experiencing an overdose  
3177 event due to the ingestion, injection, inhalation, or other introduction into the human body of a  
3178 controlled substance or other substance;

3179 (ii) reports in good faith the overdose event to a medical provider, an emergency  
3180 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911  
3181 emergency call system, or an emergency dispatch system, or the person is the subject of a  
3182 report made under this Subsection (16);

3183 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
3184 actual location of the overdose event that facilitates responding to the person experiencing the  
3185 overdose event;

3186 (iv) remains at the location of the person experiencing the overdose event until a  
3187 responding law enforcement officer or emergency medical service provider arrives, or remains  
3188 at the medical care facility where the person experiencing an overdose event is located until a  
3189 responding law enforcement officer arrives;

3190 (v) cooperates with the responding medical provider, emergency medical service  
3191 provider, and law enforcement officer, including providing information regarding the person  
3192 experiencing the overdose event and any substances the person may have injected, inhaled, or  
3193 otherwise introduced into the person's body; and

3194 (vi) is alleged to have committed the offense in the same course of events from which  
3195 the reported overdose arose.

3196 (b) The offenses referred to in Subsection (16)(a) are:

3197 (i) the possession or use of less than 16 ounces of marijuana;

3198 (ii) the possession or use of a scheduled or listed controlled substance other than  
3199 marijuana; and

3200 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,  
3201 Imitation Controlled Substances Act.

3202 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not  
3203 include seeking medical assistance under this section during the course of a law enforcement  
3204 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

3205 (17) If any provision of this chapter, or the application of any provision to any person  
3206 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the  
3207 invalid provision or application.

3208 (18) A legislative body of a political subdivision may not enact an ordinance that is  
3209 less restrictive than any provision of this chapter.

3210 (19) (a) If a minor who is under 18 years of age is found by a court to have violated this  
3211 section and the violation is the minor's first violation of this section, the court may:

3212 (i) order the minor to complete a screening as defined in Section 41-6a-501;

3213 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the  
3214 screening indicates an assessment to be appropriate; and

3215 (iii) order the minor to complete an educational series as defined in Section 41-6a-501  
3216 or substance abuse treatment as indicated by an assessment.

3217 (b) If a minor who is under 18 years of age is found by a court to have violated this  
3218 section and the violation is the minor's second or subsequent violation of this section, the court  
3219 shall:

3220 (i) order the minor to complete a screening as defined in Section 41-6a-501;

3221 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the

3222 screening indicates an assessment to be appropriate; and

3223 (iii) order the minor to complete an educational series as defined in Section 41-6a-501

3224 or substance abuse treatment as indicated by an assessment.

3225 Section 45. Section 58-69-801 is amended to read:

3226 **58-69-801. Dental hygienist -- Limitations on practice.**

3227 A dental hygienist licensed under this chapter may only practice dental hygiene:

3228 (1) in an accredited dental or dental hygienist school to teach and demonstrate the

3229 practice of dental hygiene;

3230 (2) for a public health agency;

3231 (3) under the supervision of a dentist, for an employee leasing company or temporary

3232 personnel service company providing employees to a dentist or other person lawfully providing

3233 dental services:

3234 (a) under the indirect supervision of a dentist licensed under this chapter at any time

3235 the dental hygienist is administering an anesthetic or analgesia as permitted under this chapter

3236 or division rules made under this chapter;

3237 (b) under the general supervision of a dentist licensed under this chapter within the

3238 office of the supervising dentist and upon patients of record of the supervising dentist; and

3239 (c) under the general supervision of a dentist licensed under this chapter, and the

3240 practice is conducted outside of the office of the supervising dentist, if:

3241 (i) the dental hygiene work performed is authorized by the supervising dentist as a part

3242 of and in accordance with the supervising dentist's current treatment plan for the patient;

3243 (ii) no anesthetic or analgesia is used;

3244 (iii) the supervising dentist has determined the patient's general health and oral health

3245 are so that the dental hygiene work can be performed under general supervision and with an

3246 acceptable level of risk or injury as determined by the supervising dentist;

3247 (iv) the supervising dentist accepts responsibility for the dental hygiene work

3248 performed under general supervision; and

3249 (v) (A) the dental hygienist's work is performed on a patient who is homebound or

3250 within a hospital, nursing home, or public health agency or institution; and

3251 (B) the patient is the supervising dentist's patient of record and the dentist has  
3252 examined the patient within six months prior to the patient's receiving treatment from a dental  
3253 hygienist under this Subsection (3); [~~and~~] or

3254 (4) under a written agreement with a dentist who is licensed under this chapter and who  
3255 is a Utah resident if:

3256 (a) the dental hygienist practices in a public health setting;

3257 (b) the dentist is available in person, by phone, or by electronic communication;

3258 (c) the agreement provides that the dental hygienist shall refer a patient with a dental  
3259 need beyond the dental hygienist's scope of practice to a licensed dentist; and

3260 (d) the dental hygienist obtains from each patient an informed consent form that  
3261 provides that treatment by a dental hygienist is not a substitute for a dental examination by a  
3262 dentist.

3263 Section 46. Section **58-85-104** is amended to read:

3264 **58-85-104. Standard of care -- Medical practitioners not liable -- No private right**  
3265 **of action.**

3266 (1) It is not a breach of the applicable standard of care for a physician, other licensed  
3267 health care provider, or hospital to treat an eligible patient with an investigational drug or  
3268 investigational device under this chapter.

3269 (2) A physician, other licensed health care provider, or hospital that treats an eligible  
3270 patient with an investigational drug or investigational device under this chapter may not, for  
3271 any harm done to the eligible patient by the investigational drug or device, be subject to:

3272 (a) civil liability;

3273 (b) criminal liability; or

3274 (c) licensure sanctions under:

3275 (i) for a physician:

3276 (A) Title 58, Chapter 67, Utah Medical Practice Act; or

3277 (B) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

3278 (ii) for the other licensed health care provider, the act governing the other licensed  
3279 health care provider's license; or

3280 (iii) for the hospital, Title 26, Chapter 21, Health Care Facility Licensing and  
3281 Inspection Act.

3282 (3) This chapter does not:

3283 (a) require a manufacturer of an investigational drug or investigational device to agree  
3284 to make an investigational drug or investigational device available to an eligible patient or an  
3285 eligible patient's physician;

3286 (b) require a physician to agree to:

3287 (i) administer an investigational drug to an eligible patient under this chapter; or

3288 (ii) treat an eligible patient with an investigational device under this chapter; or

3289 (c) create a private right of action for an eligible patient:

3290 (i) against a physician or hospital, for the physician's or hospital's refusal to:

3291 (A) administer an investigational drug to an eligible patient under this chapter; or

3292 (B) treat an eligible patient with an investigational device under this chapter; or

3293 (ii) against a manufacturer, for the manufacturer's refusal to provide an eligible patient  
3294 with an investigational drug or an investigational device under this chapter.

3295 Section 47. Section **59-12-103** is amended to read:

3296 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**  
3297 **tax revenues.**

3298 (1) A tax is imposed on the purchaser as provided in this part for amounts paid or  
3299 charged for the following transactions:

3300 (a) retail sales of tangible personal property made within the state;

3301 (b) amounts paid for:

3302 (i) telecommunications service, other than mobile telecommunications service, that  
3303 originates and terminates within the boundaries of this state;

3304 (ii) mobile telecommunications service that originates and terminates within the  
3305 boundaries of one state only to the extent permitted by the Mobile Telecommunications

3306 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or  
3307 (iii) an ancillary service associated with a:  
3308 (A) telecommunications service described in Subsection (1)(b)(i); or  
3309 (B) mobile telecommunications service described in Subsection (1)(b)(ii);  
3310 (c) sales of the following for commercial use:  
3311 (i) gas;  
3312 (ii) electricity;  
3313 (iii) heat;  
3314 (iv) coal;  
3315 (v) fuel oil; or  
3316 (vi) other fuels;  
3317 (d) sales of the following for residential use:  
3318 (i) gas;  
3319 (ii) electricity;  
3320 (iii) heat;  
3321 (iv) coal;  
3322 (v) fuel oil; or  
3323 (vi) other fuels;  
3324 (e) sales of prepared food;  
3325 (f) except as provided in Section [59-12-104](#), amounts paid or charged as admission or  
3326 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,  
3327 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,  
3328 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit  
3329 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf  
3330 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,  
3331 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,  
3332 horseback rides, sports activities, or any other amusement, entertainment, recreation,  
3333 exhibition, cultural, or athletic activity;

3334 (g) amounts paid or charged for services for repairs or renovations of tangible personal  
3335 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

3336 (i) the tangible personal property; and

3337 (ii) parts used in the repairs or renovations of the tangible personal property described  
3338 in Subsection (1)(g)(i), regardless of whether:

3339 (A) any parts are actually used in the repairs or renovations of that tangible personal  
3340 property; or

3341 (B) the particular parts used in the repairs or renovations of that tangible personal  
3342 property are exempt from a tax under this chapter;

3343 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for  
3344 assisted cleaning or washing of tangible personal property;

3345 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court  
3346 accommodations and services that are regularly rented for less than 30 consecutive days;

3347 (j) amounts paid or charged for laundry or dry cleaning services;

3348 (k) amounts paid or charged for leases or rentals of tangible personal property if within  
3349 this state the tangible personal property is:

3350 (i) stored;

3351 (ii) used; or

3352 (iii) otherwise consumed;

3353 (l) amounts paid or charged for tangible personal property if within this state the  
3354 tangible personal property is:

3355 (i) stored;

3356 (ii) used; or

3357 (iii) consumed; and

3358 (m) amounts paid or charged for a sale:

3359 (i) (A) of a product transferred electronically; or

3360 (B) of a repair or renovation of a product transferred electronically; and

3361 (ii) regardless of whether the sale provides:

- 3362 (A) a right of permanent use of the product; or
- 3363 (B) a right to use the product that is less than a permanent use, including a right:
  - 3364 (I) for a definite or specified length of time; and
  - 3365 (II) that terminates upon the occurrence of a condition.
- 3366 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax
- 3367 is imposed on a transaction described in Subsection (1) equal to the sum of:
  - 3368 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
    - 3369 (A) 4.70%; and
    - 3370 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales
    - 3371 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
    - 3372 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional
    - 3373 State Sales and Use Tax Act; and
    - 3374 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales
    - 3375 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211
    - 3376 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state
    - 3377 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
    - 3378 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
    - 3379 transaction under this chapter other than this part.
  - 3380 (b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
  - 3381 on a transaction described in Subsection (1)(d) equal to the sum of:
    - 3382 (i) a state tax imposed on the transaction at a tax rate of 2%; and
    - 3383 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
    - 3384 transaction under this chapter other than this part.
  - 3385 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed
  - 3386 on amounts paid or charged for food and food ingredients equal to the sum of:
    - 3387 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
    - 3388 a tax rate of 1.75%; and
    - 3389 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the

3390 amounts paid or charged for food and food ingredients under this chapter other than this part.

3391 (d) (i) For a bundled transaction that is attributable to food and food ingredients and  
3392 tangible personal property other than food and food ingredients, a state tax and a local tax is  
3393 imposed on the entire bundled transaction equal to the sum of:

3394 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

3395 (I) the tax rate described in Subsection (2)(a)(i)(A); and

3396 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State  
3397 Sales and Use Tax Act, if the location of the transaction as determined under Sections  
3398 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,  
3399 Additional State Sales and Use Tax Act; and

3400 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State  
3401 Sales and Use Tax Act, if the location of the transaction as determined under Sections  
3402 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which  
3403 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

3404 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates  
3405 described in Subsection (2)(a)(ii).

3406 (ii) If an optional computer software maintenance contract is a bundled transaction that  
3407 consists of taxable and nontaxable products that are not separately itemized on an invoice or  
3408 similar billing document, the purchase of the optional computer software maintenance contract  
3409 is 40% taxable under this chapter and 60% nontaxable under this chapter.

3410 (iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled  
3411 transaction described in Subsection (2)(d)(i) or (ii):

3412 (A) if the sales price of the bundled transaction is attributable to tangible personal  
3413 property, a product, or a service that is subject to taxation under this chapter and tangible  
3414 personal property, a product, or service that is not subject to taxation under this chapter, the  
3415 entire bundled transaction is subject to taxation under this chapter unless:

3416 (I) the seller is able to identify by reasonable and verifiable standards the tangible  
3417 personal property, product, or service that is not subject to taxation under this chapter from the

3418 books and records the seller keeps in the seller's regular course of business; or

3419 (II) state or federal law provides otherwise; or

3420 (B) if the sales price of a bundled transaction is attributable to two or more items of  
3421 tangible personal property, products, or services that are subject to taxation under this chapter  
3422 at different rates, the entire bundled transaction is subject to taxation under this chapter at the  
3423 higher tax rate unless:

3424 (I) the seller is able to identify by reasonable and verifiable standards the tangible  
3425 personal property, product, or service that is subject to taxation under this chapter at the lower  
3426 tax rate from the books and records the seller keeps in the seller's regular course of business; or

3427 (II) state or federal law provides otherwise.

3428 (iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the  
3429 seller's regular course of business includes books and records the seller keeps in the regular  
3430 course of business for nontax purposes.

3431 (e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii)  
3432 and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a  
3433 product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental  
3434 of tangible personal property, other property, a product, or a service that is not subject to  
3435 taxation under this chapter, the entire transaction is subject to taxation under this chapter unless  
3436 the seller, at the time of the transaction:

3437 (A) separately states the portion of the transaction that is not subject to taxation under  
3438 this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

3439 (B) is able to identify by reasonable and verifiable standards, from the books and  
3440 records the seller keeps in the seller's regular course of business, the portion of the transaction  
3441 that is not subject to taxation under this chapter.

3442 (ii) A purchaser and a seller may correct the taxability of a transaction if:

3443 (A) after the transaction occurs, the purchaser and the seller discover that the portion of  
3444 the transaction that is not subject to taxation under this chapter was not separately stated on an  
3445 invoice, bill of sale, or similar document provided to the purchaser because of an error or

3446 ignorance of the law; and

3447 (B) the seller is able to identify by reasonable and verifiable standards, from the books  
3448 and records the seller keeps in the seller's regular course of business, the portion of the  
3449 transaction that is not subject to taxation under this chapter.

3450 (iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps  
3451 in the seller's regular course of business includes books and records the seller keeps in the  
3452 regular course of business for nontax purposes.

3453 (f) (i) If the sales price of a transaction is attributable to two or more items of tangible  
3454 personal property, products, or services that are subject to taxation under this chapter at  
3455 different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate  
3456 unless the seller, at the time of the transaction:

3457 (A) separately states the items subject to taxation under this chapter at each of the  
3458 different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

3459 (B) is able to identify by reasonable and verifiable standards the tangible personal  
3460 property, product, or service that is subject to taxation under this chapter at the lower tax rate  
3461 from the books and records the seller keeps in the seller's regular course of business.

3462 (ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the  
3463 seller's regular course of business includes books and records the seller keeps in the regular  
3464 course of business for nontax purposes.

3465 (g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax  
3466 rate imposed under the following shall take effect on the first day of a calendar quarter:

3467 (i) Subsection (2)(a)(i)(A);

3468 (ii) Subsection (2)(b)(i);

3469 (iii) Subsection (2)(c)(i); or

3470 (iv) Subsection (2)(d)(i)(A)(I).

3471 (h) (i) A tax rate increase takes effect on the first day of the first billing period that  
3472 begins on or after the effective date of the tax rate increase if the billing period for the  
3473 transaction begins before the effective date of a tax rate increase imposed under:

3474 (A) Subsection (2)(a)(i)(A);

3475 (B) Subsection (2)(b)(i);

3476 (C) Subsection (2)(c)(i); or

3477 (D) Subsection (2)(d)(i)(A)(I).

3478 (ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing  
3479 statement for the billing period is rendered on or after the effective date of the repeal of the tax  
3480 or the tax rate decrease imposed under:

3481 (A) Subsection (2)(a)(i)(A);

3482 (B) Subsection (2)(b)(i);

3483 (C) Subsection (2)(c)(i); or

3484 (D) Subsection (2)(d)(i)(A)(I).

3485 (i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is  
3486 computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or  
3487 change in a tax rate takes effect:

3488 (A) on the first day of a calendar quarter; and

3489 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

3490 (ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

3491 (A) Subsection (2)(a)(i)(A);

3492 (B) Subsection (2)(b)(i);

3493 (C) Subsection (2)(c)(i); or

3494 (D) Subsection (2)(d)(i)(A)(I).

3495 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
3496 the commission may by rule define the term "catalogue sale."

3497 (3) (a) The following state taxes shall be deposited into the General Fund:

3498 (i) the tax imposed by Subsection (2)(a)(i)(A);

3499 (ii) the tax imposed by Subsection (2)(b)(i);

3500 (iii) the tax imposed by Subsection (2)(c)(i); or

3501 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

3502 (b) The following local taxes shall be distributed to a county, city, or town as provided  
3503 in this chapter:

- 3504 (i) the tax imposed by Subsection (2)(a)(ii);
- 3505 (ii) the tax imposed by Subsection (2)(b)(ii);
- 3506 (iii) the tax imposed by Subsection (2)(c)(ii); and
- 3507 (iv) the tax imposed by Subsection (2)(d)(i)(B).

3508 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
3509 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b)  
3510 through (g):

- 3511 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
  - 3512 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
  - 3513 (B) for the fiscal year; or
- 3514 (ii) \$17,500,000.

3515 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount  
3516 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the  
3517 Department of Natural Resources to:

- 3518 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to  
3519 protect sensitive plant and animal species; or
- 3520 (B) award grants, up to the amount authorized by the Legislature in an appropriations  
3521 act, to political subdivisions of the state to implement the measures described in Subsections  
3522 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

3523 (ii) Money transferred to the Department of Natural Resources under Subsection  
3524 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other  
3525 person to list or attempt to have listed a species as threatened or endangered under the  
3526 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

3527 (iii) At the end of each fiscal year:

- 3528 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
3529 Conservation and Development Fund created in Section 73-10-24;

3530 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
3531 Program Subaccount created in Section 73-10c-5; and

3532 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
3533 Program Subaccount created in Section 73-10c-5.

3534 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in  
3535 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund  
3536 created in Section 4-18-106.

3537 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described  
3538 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water  
3539 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of  
3540 water rights.

3541 (ii) At the end of each fiscal year:

3542 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources  
3543 Conservation and Development Fund created in Section 73-10-24;

3544 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan  
3545 Program Subaccount created in Section 73-10c-5; and

3546 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan  
3547 Program Subaccount created in Section 73-10c-5.

3548 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described  
3549 in Subsection (4)(a) shall be deposited ~~[in]~~ into the Water Resources Conservation and  
3550 Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

3551 (ii) In addition to the uses allowed of the Water Resources Conservation and  
3552 Development Fund under Section 73-10-24, the Water Resources Conservation and  
3553 Development Fund may also be used to:

3554 (A) conduct hydrologic and geotechnical investigations by the Division of Water  
3555 Resources in a cooperative effort with other state, federal, or local entities~~[-]~~ for the purpose of  
3556 quantifying surface and ground water resources and describing the hydrologic systems of an  
3557 area in sufficient detail so as to enable local and state resource managers to plan for and

3558 accommodate growth in water use without jeopardizing the resource;

3559 (B) fund state required dam safety improvements; and

3560 (C) protect the state's interest in interstate water compact allocations, including the  
3561 hiring of technical and legal staff.

3562 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
3563 in Subsection (4)(a) shall be deposited [in] into the Utah Wastewater Loan Program  
3564 Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater  
3565 projects.

3566 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described  
3567 in Subsection (4)(a) shall be deposited [in] into the Drinking Water Loan Program Subaccount  
3568 created in Section 73-10c-5 for use by the Division of Drinking Water to:

3569 (i) provide for the installation and repair of collection, treatment, storage, and  
3570 distribution facilities for any public water system, as defined in Section 19-4-102;

3571 (ii) develop underground sources of water, including springs and wells; and

3572 (iii) develop surface water sources.

3573 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
3574 2006, the difference between the following amounts shall be expended as provided in this  
3575 Subsection (5), if that difference is greater than \$1:

3576 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the  
3577 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

3578 (ii) \$17,500,000.

3579 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

3580 (A) transferred each fiscal year to the Department of Natural Resources as dedicated  
3581 credits; and

3582 (B) expended by the Department of Natural Resources for watershed rehabilitation or  
3583 restoration.

3584 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
3585 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund

3586 created in Section 73-10-24.

3587 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the  
3588 remaining difference described in Subsection (5)(a) shall be:

3589 (A) transferred each fiscal year to the Division of Water Resources as dedicated  
3590 credits; and

3591 (B) expended by the Division of Water Resources for cloud-seeding projects  
3592 authorized by Title 73, Chapter 15, Modification of Weather.

3593 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described  
3594 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund  
3595 created in Section 73-10-24.

3596 (d) After making the transfers required by Subsections (5)(b) and (c), 94% of the  
3597 remaining difference described in Subsection (5)(a) shall be deposited into the Water  
3598 Resources Conservation and Development Fund created in Section 73-10-24 for use by the  
3599 Division of Water Resources for:

3600 (i) preconstruction costs:

3601 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter  
3602 26, Bear River Development Act; and

3603 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project  
3604 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

3605 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,  
3606 Chapter 26, Bear River Development Act;

3607 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project  
3608 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

3609 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and  
3610 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

3611 (e) After making the transfers required by Subsections (5)(b) and (c) and subject to  
3612 Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be  
3613 transferred each year as dedicated credits to the Division of Water Rights to cover the costs

3614 incurred for employing additional technical staff for the administration of water rights.

3615 (f) At the end of each fiscal year, any unexpended dedicated credits described in  
3616 Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development  
3617 Fund created in Section 73-10-24.

3618 (6) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,  
3619 2003, and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16%  
3620 tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited [in]  
3621 into the Transportation Fund created by Section 72-2-102.

3622 (7) Notwithstanding Subsection (3)(a), beginning on July 1, 2012, the Division of  
3623 Finance shall deposit into the Transportation Investment Fund of 2005 created in Section  
3624 72-2-124 a portion of the taxes listed under Subsection (3)(a) equal to the revenues generated  
3625 by a 1/64% tax rate on the taxable transactions under Subsection (1).

3626 (8) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in  
3627 Subsection (7), and subject to Subsection (8)(b), for a fiscal year beginning on or after July 1,  
3628 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005  
3629 created by Section 72-2-124:

3630 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of  
3631 the revenues collected from the following taxes, which represents a portion of the  
3632 approximately 17% of sales and use tax revenues generated annually by the sales and use tax  
3633 on vehicles and vehicle-related products:

- 3634 (A) the tax imposed by Subsection (2)(a)(i)(A);
- 3635 (B) the tax imposed by Subsection (2)(b)(i);
- 3636 (C) the tax imposed by Subsection (2)(c)(i); and
- 3637 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

3638 (ii) an amount equal to 30% of the growth in the amount of revenues collected in the  
3639 current fiscal year from the sales and use taxes described in Subsections (8)(a)(i)(A) through  
3640 (D) that exceeds the amount collected from the sales and use taxes described in Subsections  
3641 (8)(a)(i)(A) through (D) in the 2010-11 fiscal year.

3642 (b) (i) Subject to Subsections (8)(b)(ii) and (iii), in any fiscal year that the portion of  
3643 the sales and use taxes deposited under Subsection (8)(a) represents an amount that is a total  
3644 lower percentage of the sales and use taxes described in Subsections (8)(a)(i)(A) through (D)  
3645 generated in the current fiscal year than the total percentage of sales and use taxes deposited in  
3646 the previous fiscal year, the Division of Finance shall deposit an amount under Subsection  
3647 (8)(a) equal to the product of:

3648 (A) the total percentage of sales and use taxes deposited under Subsection (8)(a) in the  
3649 previous fiscal year; and

3650 (B) the total sales and use tax revenue generated by the taxes described in Subsections  
3651 (8)(a)(i)(A) through (D) in the current fiscal year.

3652 (ii) In any fiscal year in which the portion of the sales and use taxes deposited under  
3653 Subsection (8)(a) would exceed 17% of the revenues collected from the sales and use taxes  
3654 described in Subsections (8)(a)(i)(A) through (D) in the current fiscal year, the Division of  
3655 Finance shall deposit 17% of the revenues collected from the sales and use taxes described in  
3656 Subsections (8)(a)(i)(A) through (D) for the current fiscal year under Subsection (8)(a).

3657 (iii) In all subsequent fiscal years after a year in which 17% of the revenues collected  
3658 from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) was deposited  
3659 under Subsection (8)(a), the Division of Finance shall annually deposit 17% of the revenues  
3660 collected from the sales and use taxes described in Subsections (8)(a)(i)(A) through (D) in the  
3661 current fiscal year under Subsection (8)(a).

3662 (9) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under  
3663 Subsections (7) and (8), for a fiscal year beginning on or after July 1, 2012, the Division of  
3664 Finance shall annually deposit \$90,000,000 of the revenues generated by the taxes listed under  
3665 Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section  
3666 [72-2-124](#).

3667 (10) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year  
3668 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund  
3669 created by Section [35A-8-1009](#) and expended as provided in Section [35A-8-1009](#).

3670 (11) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (11)(b),  
3671 and in addition to any amounts deposited under Subsections (7), (8), and (9), beginning on July  
3672 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005  
3673 created by Section 72-2-124 the amount of tax revenue generated by a .025% tax rate on the  
3674 transactions described in Subsection (1).

3675 (b) For purposes of Subsection (11)(a), the Division of Finance may not deposit into  
3676 the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or  
3677 charged for food and food ingredients, except for tax revenue generated by a bundled  
3678 transaction attributable to food and food ingredients and tangible personal property other than  
3679 food and food ingredients described in Subsection (2)(d).

3680 (12) (a) Notwithstanding Subsection (3)(a), and except as provided in Subsection  
3681 (12)(b), beginning on January 1, 2009, the Division of Finance shall deposit into the  
3682 Transportation Fund created by Section 72-2-102 the amount of tax revenue generated by a  
3683 .025% tax rate on the transactions described in Subsection (1) to be expended to address  
3684 chokepoints in construction management.

3685 (b) For purposes of Subsection (12)(a), the Division of Finance may not deposit into  
3686 the Transportation Fund any tax revenue generated by amounts paid or charged for food and  
3687 food ingredients, except for tax revenue generated by a bundled transaction attributable to food  
3688 and food ingredients and tangible personal property other than food and food ingredients  
3689 described in Subsection (2)(d).

3690 (13) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the  
3691 fiscal year during which the Division of Finance receives notice under Subsection  
3692 63N-2-510~~(3)~~(2) that construction on a qualified hotel, as defined in Section 63N-2-502, has  
3693 begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit  
3694 \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel  
3695 Impact Mitigation Fund, created in Section 63N-2-512.

3696 (14) Notwithstanding Subsections (4) through (13), an amount required to be expended  
3697 or deposited in accordance with Subsections (4) through (13) may not include an amount the

3698 Division of Finance deposits in accordance with Section 59-12-103.2.

3699 Section 48. Section 59-12-2218 is amended to read:

3700 **59-12-2218. County, city, or town option sales and use tax for airports, highways,**  
3701 **and systems for public transit -- Base -- Rate -- Administration of sales and use tax --**  
3702 **Voter approval exception.**

3703 (1) Subject to the other provisions of this part, the following may impose a sales and  
3704 use tax under this section:

3705 (a) if, on April 1, 2009, a county legislative body of a county of the second class  
3706 imposes a sales and use tax under this section, the county legislative body of the county of the  
3707 second class may impose the sales and use tax on the transactions:

3708 (i) described in Subsection 59-12-103(1); and

3709 (ii) within the county, including the cities and towns within the county; or

3710 (b) if, on April 1, 2009, a county legislative body of a county of the second class does  
3711 not impose a sales and use tax under this section:

3712 (i) a city legislative body of a city within the county of the second class may impose a  
3713 sales and use tax under this section on the transactions described in Subsection 59-12-103(1)  
3714 within that city;

3715 (ii) a town legislative body of a town within the county of the second class may impose  
3716 a sales and use tax under this section on the transactions described in Subsection 59-12-103(1)  
3717 within that town; and

3718 (iii) the county legislative body of the county of the second class may impose a sales  
3719 and use tax on the transactions described in Subsection 59-12-103(1):

3720 (A) within the county, including the cities and towns within the county, if on the date  
3721 the county legislative body provides the notice described in Section 59-12-2209 to the  
3722 commission stating that the county will enact a sales and use tax under this section, no city or  
3723 town within that county imposes a sales and use tax under this section or has provided the  
3724 notice described in Section 59-12-2209 to the commission stating that the city or town will  
3725 enact a sales and use tax under this section; or

3726 (B) within the county, except for within a city or town within that county, if, on the  
3727 date the county legislative body provides the notice described in Section 59-12-2209 to the  
3728 commission stating that the county will enact a sales and use tax under this section, that city or  
3729 town imposes a sales and use tax under this section or has provided the notice described in  
3730 Section 59-12-2209 to the commission stating that the city or town will enact a sales and use  
3731 tax under this section.

3732 (2) For purposes of Subsection (1) and subject to the other provisions of this section, a  
3733 county, city, or town legislative body that imposes a sales and use tax under this section may  
3734 impose the tax at a rate of:

3735 (a) .10%; or

3736 (b) .25%.

3737 (3) A sales and use tax imposed at a rate described in Subsection (2)(a) shall be  
3738 expended as determined by the county, city, or town legislative body as follows:

3739 (a) deposited as provided in Subsection (9)(b) into the County of the Second Class  
3740 State Highway Projects Fund created by Section 72-2-121.2 and expended as provided in  
3741 Section 72-2-121.2;

3742 (b) expended for a project or service relating to an airport facility for the portion of the  
3743 project or service that is performed within the county, city, or town within which the tax is  
3744 imposed:

3745 (i) for a county legislative body that imposes the sales and use tax, if that airport  
3746 facility is part of the regional transportation plan of the area metropolitan planning organization  
3747 if a metropolitan planning organization exists for the area; or

3748 (ii) for a city or town legislative body that imposes the sales and use tax, if:

3749 (A) that city or town owns or operates the airport facility; and

3750 (B) an airline is headquartered in that city or town; or

3751 (c) deposited or expended for a combination of Subsections (3)(a) and (b).

3752 (4) Subject to Subsections (5) through (7), a sales and use tax imposed at a rate  
3753 described in Subsection (2)(b) shall be expended as determined by the county, city, or town

3754 legislative body as follows:

3755 (a) deposited as provided in Subsection (9)(b) into the County of the Second Class  
3756 State Highway Projects Fund created by Section 72-2-121.2 and expended as provided in  
3757 Section 72-2-121.2;

3758 (b) expended for:

3759 (i) a state highway designated under Title 72, Chapter 4, Part 1, State Highways;

3760 (ii) a local highway that is a principal arterial highway, minor arterial highway, major  
3761 collector highway, or minor collector road; or

3762 (iii) a combination of Subsections (4)(b)(i) and (ii);

3763 (c) expended for a project or service relating to a system for public transit for the  
3764 portion of the project or service that is performed within the county, city, or town within which  
3765 the sales and use tax is imposed;

3766 (d) expended for a project or service relating to an airport facility for the portion of the  
3767 project or service that is performed within the county, city, or town within which the sales and  
3768 use tax is imposed:

3769 (i) for a county legislative body that imposes the sales and use tax, if that airport  
3770 facility is part of the regional transportation plan of the area metropolitan planning organization  
3771 if a metropolitan planning organization exists for the area; or

3772 (ii) for a city or town legislative body that imposes the sales and use tax, if:

3773 (A) that city or town owns or operates the airport facility; and

3774 (B) an airline is headquartered in that city or town;

3775 (e) expended for:

3776 (i) a class B road, as defined in Section 72-3-103;

3777 (ii) a class C road, as defined in Section 72-3-104; or

3778 (iii) a combination of Subsections (4)(e)(i) and (ii);

3779 (f) expended for traffic and pedestrian safety, including:

3780 (i) for a class B road, as defined in Section 72-3-103, or class C road, as defined in  
3781 Section 72-3-104, for:

- 3782 (A) a sidewalk;
- 3783 (B) curb and gutter;
- 3784 (C) a safety feature;
- 3785 (D) a traffic sign;
- 3786 (E) a traffic signal;
- 3787 (F) street lighting; or
- 3788 (G) a combination of Subsections (4)(f)(i)(A) through (F);
- 3789 (ii) the construction of an active transportation facility that:
  - 3790 (A) is for nonmotorized vehicles and multimodal transportation; and
  - 3791 (B) connects an origin with a destination; or
- 3792 (iii) a combination of Subsections (4)(f)(i) and (ii); or
- 3793 (g) deposited or expended for a combination of Subsections (4)(a) through (f).
- 3794 (5) A county, city, or town legislative body may not expend revenue collected within a
- 3795 county, city, or town from a tax under this ~~[part]~~ section for a purpose described in Subsections
- 3796 (4)(b) through (f) unless the purpose is recommended by:
  - 3797 (a) for a county that is part of a metropolitan planning organization, the metropolitan
  - 3798 planning organization of which the county is a part; or
  - 3799 (b) for a county that is not part of a metropolitan planning organization, the council of
  - 3800 governments of which the county is a part.
- 3801 (6) (a) (i) Except as provided in Subsection (6)(b), a county, city, or town that imposes
- 3802 a tax described in Subsection (2)(b) shall deposit the revenue collected from a tax rate of .05%
- 3803 as provided in Subsection (9)(b)(i) into the Local Transportation Corridor Preservation Fund
- 3804 created by Section [72-2-117.5](#).
- 3805 (ii) Revenue deposited in accordance with Subsection (6)(a)(i) shall be expended and
- 3806 distributed in accordance with Section [72-2-117.5](#).
- 3807 (b) A county, city, or town is not required to make the deposit required by Subsection
- 3808 (6)(a)(i) if the county, city, or town:
  - 3809 (i) imposed a tax described in Subsection (2)(b) on July 1, 2010; or

3810 (ii) has continuously imposed a tax described in Subsection (2)(b):  
3811 (A) beginning after July 1, 2010; and  
3812 (B) for a five-year period.

3813 (7) (a) Subject to the other provisions of this Subsection (7), a city or town within  
3814 which a sales and use tax is imposed at the tax rate described in Subsection (2)(b) may:  
3815 (i) expend the revenues in accordance with Subsection (4); or  
3816 (ii) expend the revenues in accordance with Subsections (7)(b) through (d) if:  
3817 (A) that city or town owns or operates an airport facility; and  
3818 (B) an airline is headquartered in that city or town.

3819 (b) (i) A city or town legislative body of a city or town within which a sales and use tax  
3820 is imposed at the tax rate described in Subsection (2)(b) may expend the revenues collected  
3821 from a tax rate of greater than .10% but not to exceed the revenues collected from a tax rate of  
3822 .25% for a purpose described in Subsection (7)(b)(ii) if:  
3823 (A) that city or town owns or operates an airport facility; and  
3824 (B) an airline is headquartered in that city or town.

3825 (ii) A city or town described in Subsection (7)(b)(i) may expend the revenues collected  
3826 from a tax rate of greater than .10% but not to exceed the revenues collected from a tax rate of  
3827 .25% for:  
3828 (A) a project or service relating to the airport facility; and  
3829 (B) the portion of the project or service that is performed within the city or town  
3830 imposing the sales and use tax.

3831 (c) If a city or town legislative body described in Subsection (7)(b)(i) determines to  
3832 expend the revenues collected from a tax rate of greater than .10% but not to exceed the  
3833 revenues collected from a tax rate of .25% for a project or service relating to an airport facility  
3834 as allowed by Subsection (7)(b), any remaining revenue that is collected from the sales and use  
3835 tax imposed at the tax rate described in Subsection (2)(b) that is not expended for the project or  
3836 service relating to an airport facility as allowed by Subsection (7)(b) shall be expended as  
3837 follows:

3838 (i) 75% of the remaining revenues shall be deposited as provided in Subsection (9)(c)  
3839 into the County of the Second Class State Highway Projects Fund created by Section  
3840 72-2-121.2 and expended as provided in Section 72-2-121.2; and

3841 (ii) 25% of the remaining revenues shall be deposited as provided in Subsection (9)(c)  
3842 into the Local Transportation Corridor Preservation Fund created by Section 72-2-117.5 and  
3843 expended and distributed in accordance with Section 72-2-117.5.

3844 (d) A city or town legislative body that expends the revenues collected from a sales and  
3845 use tax imposed at the tax rate described in Subsection (2)(b) in accordance with Subsections  
3846 (7)(b) and (c):

3847 (i) shall, on or before the date the city or town legislative body provides the notice  
3848 described in Section 59-12-2209 to the commission stating that the city or town will enact a  
3849 sales and use tax under this section:

3850 (A) determine the tax rate, the percentage of which is greater than .10% but does not  
3851 exceed .25%, the collections from which the city or town legislative body will expend for a  
3852 project or service relating to an airport facility as allowed by Subsection (7)(b); and

3853 (B) notify the commission in writing of the tax rate the city or town legislative body  
3854 determines in accordance with Subsection (7)(d)(i)(A);

3855 (ii) shall, on or before the April 1 immediately following the date the city or town  
3856 legislative body provides the notice described in Subsection (7)(d)(i) to the commission:

3857 (A) determine the tax rate, the percentage of which is greater than .10% but does not  
3858 exceed .25%, the collections from which the city or town legislative body will expend for a  
3859 project or service relating to an airport facility as allowed by Subsection (7)(b); and

3860 (B) notify the commission in writing of the tax rate the city or town legislative body  
3861 determines in accordance with Subsection (7)(d)(ii)(A);

3862 (iii) shall, on or before April 1 of each year after the April 1 described in Subsection  
3863 (7)(d)(ii):

3864 (A) determine the tax rate, the percentage of which is greater than .10% but does not  
3865 exceed .25%, the collections from which the city or town legislative body will expend for a

3866 project or service relating to an airport facility as allowed by Subsection (7)(b); and

3867 (B) notify the commission in writing of the tax rate the city or town legislative body  
3868 determines in accordance with Subsection (7)(d)(iii)(A); and

3869 (iv) may not change the tax rate the city or town legislative body determines in  
3870 accordance with Subsections (7)(d)(i) through (iii) more frequently than as prescribed by  
3871 Subsections (7)(d)(i) through (iii).

3872 (8) Before a city or town legislative body may impose a sales and use tax under this  
3873 section, the city or town legislative body shall provide a copy of the notice described in Section  
3874 [59-12-2209](#) that the city or town legislative body provides to the commission:

3875 (a) to the county legislative body within which the city or town is located; and

3876 (b) at the same time as the city or town legislative body provides the notice to the  
3877 commission.

3878 (9) (a) Subject to Subsections (9)(b) through (e) and Section [59-12-2207](#), the  
3879 commission shall transmit revenues collected within a county, city, or town from a tax under  
3880 this part that will be expended for a purpose described in Subsection (3)(b) or Subsections  
3881 (4)(b) through (f) to the county, city, or town legislative body in accordance with Section  
3882 [59-12-2206](#).

3883 (b) Except as provided in Subsection (9)(c) and subject to Section [59-12-2207](#), the  
3884 commission shall deposit revenues collected within a county, city, or town from a sales and use  
3885 tax under this section that:

3886 (i) are required to be expended for a purpose described in Subsection (6)(a) into the  
3887 Local Transportation Corridor Preservation Fund created by Section [72-2-117.5](#); or

3888 (ii) a county, city, or town legislative body determines to expend for a purpose  
3889 described in Subsection (3)(a) or (4)(a) into the County of the Second Class State Highway  
3890 Projects Fund created by Section [72-2-121.2](#) if the county, city, or town legislative body  
3891 provides written notice to the commission requesting the deposit.

3892 (c) Subject to Subsection (9)(d) or (e), if a city or town legislative body provides notice  
3893 to the commission in accordance with Subsection (7)(d), the commission shall:

3894 (i) transmit the revenues collected from the tax rate stated on the notice to the city or  
3895 town legislative body monthly by electronic funds transfer; and

3896 (ii) deposit any remaining revenues described in Subsection (7)(c) in accordance with  
3897 Subsection (7)(c).

3898 (d) (i) If a city or town legislative body provides the notice described in Subsection  
3899 (7)(d)(i) to the commission, the commission shall transmit or deposit the revenues collected  
3900 from the sales and use tax:

3901 (A) in accordance with Subsection (9)(c);

3902 (B) beginning on the date the city or town legislative body enacts the sales and use tax;  
3903 and

3904 (C) ending on the earlier of the June 30 immediately following the date the city or town  
3905 legislative body provides the notice described in Subsection (7)(d)(ii) to the commission or the  
3906 date the city or town legislative body repeals the sales and use tax.

3907 (ii) If a city or town legislative body provides the notice described in Subsection  
3908 (7)(d)(ii) or (iii) to the commission, the commission shall transmit or deposit the revenues  
3909 collected from the sales and use tax:

3910 (A) in accordance with Subsection (9)(c);

3911 (B) beginning on the July 1 immediately following the date the city or town legislative  
3912 body provides the notice described in Subsection (7)(d)(ii) or (iii) to the commission; and

3913 (C) ending on the earlier of the June 30 of the year after the date the city or town  
3914 legislative body provides the notice described in Subsection (7)(d)(ii) or (iii) to the commission  
3915 or the date the city or town legislative body repeals the sales and use tax.

3916 (e) (i) If a city or town legislative body that is required to provide the notice described  
3917 in Subsection (7)(d)(i) does not provide the notice described in Subsection (7)(d)(i) to the  
3918 commission on or before the date required by Subsection (7)(d) for providing the notice, the  
3919 commission shall transmit, transfer, or deposit the revenues collected from the sales and use  
3920 tax within the city or town in accordance with Subsections (9)(a) and (b).

3921 (ii) If a city or town legislative body that is required to provide the notice described in

3922 Subsection (7)(d)(ii) or (iii) does not provide the notice described in Subsection (7)(d)(ii) or  
3923 (iii) to the commission on or before the date required by Subsection (7)(d) for providing the  
3924 notice, the commission shall transmit or deposit the revenues collected from the sales and use  
3925 tax within the city or town in accordance with:

3926 (A) Subsection (9)(c); and

3927 (B) the most recent notice the commission received from the city or town legislative  
3928 body under Subsection (7)(d).

3929 Section 49. Section **59-22-202** is amended to read:

3930 **59-22-202. Definitions.**

3931 As used in this part:

3932 (1) "Adjusted for inflation" means increased in accordance with the formula for  
3933 inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

3934 (2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or  
3935 controlled by, or is under common ownership or control with, another person. Solely for  
3936 purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of  
3937 an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an  
3938 individual, partnership, committee, association, corporation, or any other organization or group  
3939 of persons.

3940 (3) "Allocable share" means Allocable Share as that term is defined in the Master  
3941 Settlement Agreement.

3942 (4) "Cigarette" means any product that contains nicotine, is intended to be burned or  
3943 heated under ordinary conditions of use, and consists of or contains:

3944 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

3945 (b) tobacco, in any form, that is functional in the product, which, because of its  
3946 appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be  
3947 offered to, or purchased by, consumers as a cigarette; or

3948 (c) any roll of tobacco wrapped in any substance containing tobacco [~~which~~] that,  
3949 because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is

3950 likely to be offered to, or purchased by, consumers as a cigarette described in clause (a) of this  
3951 definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco [~~which~~] that,  
3952 because of its appearance, type, packaging, or labeling is suitable for use and likely to be  
3953 offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this  
3954 definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual  
3955 "cigarette."

3956 (5) "Master Settlement Agreement" means the settlement agreement (and related  
3957 documents) entered into on November 23, 1998, by the State and leading United States tobacco  
3958 product manufacturers.

3959 (6) "Qualified escrow fund" means an escrow arrangement with a federally or State  
3960 chartered financial institution having no affiliation with any tobacco product manufacturer and  
3961 having assets of at least \$1,000,000,000 where such arrangement requires that such financial  
3962 institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits  
3963 the tobacco product manufacturer placing the funds into escrow from using, accessing, or  
3964 directing the use of the funds' principal except as consistent with Subsection 59-22-203(2).

3965 (7) "Released claims" means Released Claims as that term is defined in the Master  
3966 Settlement Agreement.

3967 (8) "Releasing parties" means Releasing Parties as that term is defined in the Master  
3968 Settlement Agreement.

3969 (9) (a) "Tobacco product manufacturer" means an entity that after the date of enactment  
3970 of this Act directly (and not exclusively through any affiliate):

3971 (i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the  
3972 United States, including cigarettes intended to be sold in the United States through an importer  
3973 (except where such importer is an original participating manufacturer (as that term is defined in  
3974 the Master Settlement Agreement) that will be responsible for the payments under the Master  
3975 Settlement Agreement with respect to such cigarettes as a result of the provisions of Subsection  
3976 II(mm) of the Master Settlement Agreement and that pays the taxes specified in Subsection  
3977 II(z) of the Master Settlement Agreement, and provided that the manufacturer of such

3978 cigarettes does not market or advertise such cigarettes in the United States);  
3979 (ii) is the first purchaser anywhere for resale in the United States of cigarettes  
3980 manufactured anywhere that the manufacturer does not intend to be sold in the United States;

3981 or

3982 (iii) becomes a successor of an entity described in Subsection (9)(a)(i) or (ii).

3983 (b) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product  
3984 manufacturer unless such affiliate itself falls within any Subsection (9)(a)(i) through (iii).

3985 (10) "Units sold" means the number of individual cigarettes sold in the State by the  
3986 applicable tobacco product manufacturer (whether directly or through a distributor, retailer or  
3987 similar intermediary or intermediaries) during the year in question, as measured by excise taxes  
3988 collected by the State on packs (or "roll-your-own" tobacco containers). The State Tax  
3989 Commission shall promulgate such regulations as are necessary to ascertain the amount of  
3990 State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

3991 Section 50. Section **62A-2-121** is amended to read:

3992 **62A-2-121. Access to abuse and neglect information.**

3993 (1) For purposes of this section:

3994 (a) "Direct service worker" means the same as that term is defined in Section  
3995 [62A-5-101](#).

3996 (b) "Personal care attendant" means the same as that term is defined in Section  
3997 [62A-3-101](#).

3998 (2) With respect to a licensee, [~~a certified local inspector applicant,~~] a direct service  
3999 worker, or a personal care attendant, the department may access only the Licensing Information  
4000 System of the Division of Child and Family Services created by Section [62A-4a-1006](#) and  
4001 juvenile court records under Subsection [78A-6-323\(6\)](#), for the purpose of:

4002 (a) (i) determining whether a person associated with a licensee, with direct access to  
4003 children:

4004 (A) is listed in the Licensing Information System; or

4005 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or

4006 neglect under Subsections 78A-6-323(1) and (2); and  
4007 (ii) informing a licensee that a person associated with the licensee:  
4008 (A) is listed in the Licensing Information System; or  
4009 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or  
4010 neglect under Subsections 78A-6-323(1) and (2);  
4011 [~~(b) (i) determining whether a certified local inspector applicant:~~]  
4012 [~~(A) is listed in the Licensing Information System; or~~]  
4013 [~~(B) has a substantiated finding by a juvenile court of a severe type of child abuse or~~  
4014 neglect under Subsections 78A-6-323(1) and (2); and]  
4015 [~~(ii) informing a local government that a certified local inspector applicant:~~]  
4016 [~~(A) is listed in the Licensing Information System; or~~]  
4017 [~~(B) has a substantiated finding by a juvenile court of a severe type of child abuse or~~  
4018 neglect under Subsections 78A-6-323(1) and (2);]  
4019 [~~(c)~~] (b) (i) determining whether a direct service worker:  
4020 (A) is listed in the Licensing Information System; or  
4021 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or  
4022 neglect under Subsections 78A-6-323(1) and (2); and  
4023 (ii) informing a direct service worker or the direct service worker's employer that the  
4024 direct service worker:  
4025 (A) is listed in the Licensing Information System; or  
4026 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or  
4027 neglect under Subsections 78A-6-323(1) and (2); or  
4028 [~~(d)~~] (c) (i) determining whether a personal care attendant:  
4029 (A) is listed in the Licensing Information System; or  
4030 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or  
4031 neglect under Subsections 78A-6-323(1) and (2); and  
4032 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a  
4033 personal care attendant:

- 4034 (A) is listed in the Licensing Information System; or
- 4035 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
- 4036 neglect under Subsections 78A-6-323(1) and (2).
- 4037 (3) Notwithstanding Subsection (2), the department may access the Division of Child
- 4038 and Family Services' Management Information System under Section 62A-4a-1003:
- 4039 (a) for the purpose of licensing and monitoring foster parents;
- 4040 (b) for the purposes described in Subsection 62A-4a-1003(1)(d); and
- 4041 (c) for the purpose described in Section 62A-1-118.
- 4042 (4) The department shall receive and process personal identifying information under
- 4043 Subsection 62A-2-120(1) for the purposes described in Subsection (2).
- 4044 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
- 4045 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
- 4046 may have direct access or provide services to children when:
- 4047 (a) the person is listed in the Licensing Information System of the Division of Child
- 4048 and Family Services created by Section 62A-4a-1006; or
- 4049 (b) juvenile court records show that a court made a substantiated finding under Section
- 4050 78A-6-323, that the person committed a severe type of child abuse or neglect.
- 4051 Section 51. Section 62A-2-122 is amended to read:
- 4052 **62A-2-122. Access to vulnerable adult abuse and neglect information.**
- 4053 (1) For purposes of this section:
- 4054 (a) "Direct service worker" means the same as that term is defined in Section
- 4055 62A-5-101.
- 4056 (b) "Personal care attendant" means the same as that term is defined in Section
- 4057 62A-3-101.
- 4058 (2) With respect to a licensee, [~~a certified local inspector applicant,~~] a direct service
- 4059 worker, or a personal care attendant, the department may access the database created by Section
- 4060 62A-3-311.1 for the purpose of:
- 4061 (a) (i) determining whether a person associated with a licensee, with direct access to

4062 vulnerable adults, has a supported or substantiated finding of:

4063       (A) abuse;

4064       (B) neglect; or

4065       (C) exploitation; and

4066       (ii) informing a licensee that a person associated with the licensee has a supported or

4067 substantiated finding of:

4068       (A) abuse;

4069       (B) neglect; or

4070       (C) exploitation;

4071       ~~[(b) (i) determining whether a certified local inspector applicant has a supported or~~

4072 ~~substantiated finding of:]~~

4073       ~~[(A) abuse;]~~

4074       ~~[(B) neglect; or]~~

4075       ~~[(C) exploitation; and]~~

4076       ~~[(ii) informing a local government that a certified local inspector applicant has a~~

4077 ~~supported or substantiated finding of:]~~

4078       ~~[(A) abuse;]~~

4079       ~~[(B) neglect; or]~~

4080       ~~[(C) exploitation;]~~

4081       ~~[(c)]~~ (b) (i) determining whether a direct service worker has a supported or

4082 substantiated finding of:

4083       (A) abuse;

4084       (B) neglect; or

4085       (C) exploitation; and

4086       (ii) informing a direct service worker or the direct service worker's employer that the

4087 direct service worker has a supported or substantiated finding of:

4088       (A) abuse;

4089       (B) neglect; or

4090 (C) exploitation; or  
 4091 [~~(c)~~] (c) (i) determining whether a personal care attendant has a supported or  
 4092 substantiated finding of:  
 4093 (A) abuse;  
 4094 (B) neglect; or  
 4095 (C) exploitation; and  
 4096 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a  
 4097 personal care attendant has a supported or substantiated finding of:  
 4098 (A) abuse;  
 4099 (B) neglect; or  
 4100 (C) exploitation.

4101 (3) The department shall receive and process personal identifying information under  
 4102 Subsection 62A-2-120(1) for the purposes described in Subsection (2).

4103 (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative  
 4104 Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect,  
 4105 or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may  
 4106 have direct access or provide services to vulnerable adults when the person is listed in the  
 4107 statewide database of the Division of Aging and Adult Services created by Section  
 4108 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

4109 Section 52. Section 63A-5-208 is amended to read:

4110 **63A-5-208. Definitions -- Certain public construction bids to list subcontractors --**  
 4111 **Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process --**  
 4112 **Penalties.**

4113 (1) As used in this section:

4114 (a) "First-tier subcontractor" means a subcontractor who contracts directly with the  
 4115 prime contractor.

4116 (b) (i) "Subcontractor" means any person or entity under contract with a contractor or  
 4117 another subcontractor to provide services or labor for the construction, installation, or repair of

4118 an improvement to real property.

4119 ~~[(e)]~~ (ii) "Subcontractor" includes a trade contractor or specialty contractor.

4120 ~~[(d)]~~ (iii) "Subcontractor" does not include suppliers who provide only materials,  
4121 equipment, or supplies to a contractor or subcontractor.

4122 (2) The director shall apply the provisions of this section to achieve fair and  
4123 competitive bidding and to discourage bid-shopping by contractors.

4124 (3) (a) (i) (A) On each public construction project, the director shall require the  
4125 apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each  
4126 subcontractor's name, bid amount, and other information required by rule.

4127 (B) Other bidders who are not one of the apparent lowest three bidders may also  
4128 submit a list of their first-tier subcontractors containing the information required by this  
4129 Subsection (3).

4130 (C) The director may not consider any bid submitted by a bidder if the bidder fails to  
4131 submit a subcontractor list meeting the requirements of this section.

4132 (ii) On projects where the contractor's total bid is less than \$500,000, subcontractors  
4133 whose bid is less than \$20,000 need not be listed.

4134 (iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors  
4135 whose bid is less than \$35,000 need not be listed.

4136 (b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not  
4137 including Saturdays, Sundays, and state holidays.

4138 (ii) This list does not limit the director's right to authorize a change in the listing of any  
4139 subcontractor.

4140 (c) The bidders shall verify that all subcontractors listed as part of their bids are  
4141 licensed as required by state law.

4142 (d) Twenty-four hours after the bid opening, the contractor may change the contractor's  
4143 subcontractors only after:

4144 (i) receiving permission from the director; and

4145 (ii) establishing that:

4146 (A) the change is in the best interest of the state; and

4147 (B) the contractor establishes reasons for the change that meet the standards established  
4148 by the State Building Board.

4149 (e) If the director approves any changes in subcontractors that result in a net lower  
4150 contract price for subcontracted work, the total of the prime contract may be reduced to reflect  
4151 the changes.

4152 (4) (a) A bidder may list himself as a subcontractor when the bidder is currently  
4153 licensed to perform the portion of the work for which the bidder lists himself as a subcontractor  
4154 and:

4155 (i) the bidder intends to perform the work of a subcontractor himself; or

4156 (ii) the bidder intends to obtain a subcontractor to perform the work at a later date  
4157 because the bidder was unable to:

4158 (A) obtain a bid from a qualified subcontractor; or

4159 (B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be  
4160 reasonable.

4161 (b) (i) When the bidder intends to perform the work of a subcontractor himself, the  
4162 director may, by written request, require that the bidder provide the director with information  
4163 indicating the bidder's:

4164 (A) previous experience in the type of work to be performed; and

4165 (B) qualifications for performing the work.

4166 (ii) The bidder must respond in writing within five business days of receiving the  
4167 director's written request.

4168 (iii) If the bidder's submitted information causes the director to reasonably believe that  
4169 self-performance of the portion of the work by the bidder is likely to yield a substandard  
4170 finished product, the director shall:

4171 (A) require the bidder to use a subcontractor for the portion of the work in question and  
4172 obtain the subcontractor bid under the supervision of the director; or

4173 (B) reject the bidder's bid.

4174 (c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later  
4175 date, the bidder shall provide documentation with the subcontractor list describing:

4176 (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;  
4177 and

4178 (B) why the bidder was unable to obtain a qualified subcontractor bid.

4179 (ii) If the bidder who intends to obtain a subcontractor to perform the work at a later  
4180 date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified  
4181 subcontractor bid.

4182 (iii) The director may not adjust the amount of the contract awarded in order to reflect  
4183 the actual amount of the subcontractor's bid.

4184 (5) The division may not disclose any subcontractor bid amounts obtained under this  
4185 section until the division has awarded the project to a contractor.

4186 (6) (a) The director shall, in consultation with the State Building Board, prepare draft  
4187 rules establishing a process for resolving disputes involved with contracts under the division's  
4188 procurement authority.

4189 ~~[(b) The draft rules shall be presented to the Government Operations Interim  
4190 Committee for review, comment, and recommendations before August 31, 2004.]~~

4191 ~~[(c)]~~ (b) The director shall consider, and the rules may include:

4192 (i) requirements regarding preliminary resolution efforts between the parties directly  
4193 involved with the dispute;

4194 (ii) requirements for the filing of claims, including notification, timeframes, and  
4195 documentation;

4196 (iii) identification of the types of costs eligible for allocation and a method for  
4197 allocating costs among the parties to the dispute;

4198 (iv) required time periods, not to exceed 60 days, for the resolution of the claim;

4199 (v) provision for an independent hearing officer, panel, or arbitrator to extend the time  
4200 period for resolution of the claim by not to exceed 60 additional days for good cause;

4201 (vi) provision for the extension of required time periods if the claimant agrees;

- 4202 (vii) requirements that decisions be issued in writing;
- 4203 (viii) provisions for administrative appeals of the decision;
- 4204 (ix) provisions for the timely payment of claims after resolution of the dispute,
- 4205 including any appeals;
- 4206 (x) a requirement that the final determination resulting from the dispute resolution
- 4207 process provided for in the rules is a final agency action subject to judicial review as provided
- 4208 in Sections 63G-4-401 and 63G-4-402;
- 4209 (xi) a requirement that a claim or dispute that does not include a monetary claim
- 4210 against the division or its agents is not limited to the dispute resolution process provided for in
- 4211 this Subsection (6);
- 4212 (xii) requirements for claims and disputes to be eligible for this dispute resolution
- 4213 process;
- 4214 (xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and
- 4215 (xiv) the circumstances under which a subcontractor may file a claim directly with the
- 4216 division.
- 4217 [~~(d)~~] (c) Persons pursuing claims under the process required by this Subsection (6):
- 4218 (i) are bound by the decision reached under this process unless the decision is properly
- 4219 appealed; and
- 4220 (ii) may not pursue claims or disputes under the dispute resolution process established
- 4221 in Title 63G, Chapter 6a, Utah Procurement Code.
- 4222 (7) In addition to all other reasons allowed by law or rule, the director may reject all
- 4223 bids if none of the bidders whose bid is within the budget of the project submit a subcontractor
- 4224 list that meets the requirements of this section.
- 4225 (8) Any violation of this section, or any fraudulent misrepresentation by a contractor,
- 4226 subcontractor, or supplier, may be grounds for:
- 4227 (a) the contractor, subcontractor, or supplier to be suspended or debarred by the
- 4228 director; or
- 4229 (b) the contractor or subcontractor to be disciplined by the Division of Professional and

4230 Occupational Licensing.

4231 Section 53. Section **63A-13-204** is amended to read:

4232 **63A-13-204. Selection and review of claims.**

4233 (1) (a) The office shall periodically select and review a representative sample of claims  
4234 submitted for reimbursement under the state Medicaid program to determine whether fraud,  
4235 waste, or abuse occurred.

4236 (b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36  
4237 months prior to the date of the inception of the investigation or 72 months if there is a credible  
4238 allegation of fraud. In the event the office or the fraud unit determines that there is fraud as  
4239 defined in Section **63A-13-102**, then the statute of limitations defined in Subsection  
4240 **26-20-15(1)** shall apply.

4241 (2) The office may directly contact the recipient of record for a Medicaid reimbursed  
4242 service to determine whether the service for which reimbursement was claimed was actually  
4243 provided to the recipient of record.

4244 (3) The office shall:

4245 (a) generate statistics from the sample described in Subsection (1) to determine the  
4246 type of fraud, waste, or abuse that is most advantageous to focus on in future audits or  
4247 investigations;

4248 (b) ensure that the office, or any entity that contracts with the office to conduct audits:

4249 (i) has on staff or contracts with a medical or dental professional who is experienced in  
4250 the treatment, billing, and coding procedures used by the type of provider being audited; and

4251 (ii) uses the services of the appropriate professional described in Subsection (3)(b)(i) if  
4252 the provider ~~[who]~~ that is the subject of the audit disputes the findings of the audit;

4253 (c) ensure that a finding of overpayment or underpayment to a provider is not based on  
4254 extrapolation, unless:

4255 (i) there is a determination that the level of payment error involving the provider  
4256 exceeds a 10% error rate:

4257 (A) for a sample of claims for a particular service code; and

4258 (B) over a three year period of time;

4259 (ii) documented education intervention has failed to correct the level of payment error;

4260 and

4261 (iii) the value of the claims for the provider, in aggregate, exceeds \$200,000 in

4262 reimbursement for a particular service code on an annual basis; and

4263 (d) require that any entity with which the office contracts, for the purpose of

4264 conducting an audit of a service provider, shall be paid on a flat fee basis for identifying both

4265 overpayments and underpayments.

4266 (4) (a) If the office, or a contractor on behalf of the department:

4267 (i) intends to implement the use of extrapolation as a method of auditing claims, the

4268 department shall, prior to adopting the extrapolation method of auditing, report its intent to use

4269 extrapolation to:

4270 (A) the Social Services Appropriations Subcommittee; and

4271 (B) the Executive Appropriations Committee pursuant to Section 63A-13-502; and

4272 (ii) determines Subsections [(2)] (3)(c)(i) through (iii) are applicable to a provider, the

4273 office or the contractor may use extrapolation only for the service code associated with the

4274 findings under Subsections [(2)] (3)(c)(i) through (iii).

4275 (b) (i) If extrapolation is used under this section, a provider may, at the provider's

4276 option, appeal the results of the audit based on:

4277 (A) each individual claim; or

4278 (B) the extrapolation sample.

4279 (ii) Nothing in this section limits a provider's right to appeal the audit under [~~Title 63G,~~

4280 ~~Administrative Code,~~] Title 63G, Chapter 4, Administrative Procedures Act, the Medicaid

4281 program and its manual or rules, or other laws or rules that may provide remedies to providers.

4282 Section 54. Section 63E-1-203 is amended to read:

4283 **63E-1-203. Exemptions from committee activities.**

4284 Notwithstanding the other provisions of this Part 2, Retirement and Independent

4285 Entities Committee, and Subsection 63E-1-102(4), the following independent entities are

4286 exempt from the study by the committee under Section 63E-1-202:

4287 (1) the Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'  
4288 Compensation Fund; and

4289 (2) the Utah Housing Corporation created in Section 63H-8-201.

4290 Section 55. Section 63G-2-202 is amended to read:

4291 **63G-2-202. Access to private, controlled, and protected documents.**

4292 (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity  
4293 shall disclose a private record to:

4294 (a) the subject of the record;

4295 (b) the parent or legal guardian of an unemancipated minor who is the subject of the  
4296 record;

4297 (c) the legal guardian of a legally incapacitated individual who is the subject of the  
4298 record;

4299 (d) any other individual who:

4300 (i) has a power of attorney from the subject of the record;

4301 (ii) submits a notarized release from the subject of the record or the individual's legal  
4302 representative dated no more than 90 days before the date the request is made; or

4303 (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a  
4304 health care provider, as defined in Section 26-33a-102, if releasing the record or information in  
4305 the record is consistent with normal professional practice and medical ethics; or

4306 (e) any person to whom the record must be provided pursuant to:

4307 (i) court order as provided in Subsection (7); or

4308 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
4309 Powers.

4310 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

4311 (i) a physician, psychologist, certified social worker, insurance provider or producer, or  
4312 a government public health agency upon submission of:

4313 (A) a release from the subject of the record that is dated no more than 90 days prior to

4314 the date the request is made; and

4315 (B) a signed acknowledgment of the terms of disclosure of controlled information as  
4316 provided by Subsection (2)(b); and

4317 (ii) any person to whom the record must be disclosed pursuant to:

4318 (A) a court order as provided in Subsection (7); or

4319 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
4320 Powers.

4321 (b) A person who receives a record from a governmental entity in accordance with  
4322 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,  
4323 including the subject of the record.

4324 (3) If there is more than one subject of a private or controlled record, the portion of the  
4325 record that pertains to another subject shall be segregated from the portion that the requester is  
4326 entitled to inspect.

4327 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental  
4328 entity shall disclose a protected record to:

4329 (a) the person [~~who~~] that submitted the record;

4330 (b) any other individual who:

4331 (i) has a power of attorney from all persons, governmental entities, or political  
4332 subdivisions whose interests were sought to be protected by the protected classification; or

4333 (ii) submits a notarized release from all persons, governmental entities, or political  
4334 subdivisions whose interests were sought to be protected by the protected classification or from  
4335 their legal representatives dated no more than 90 days prior to the date the request is made;

4336 (c) any person to whom the record must be provided pursuant to:

4337 (i) a court order as provided in Subsection (7); or

4338 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
4339 Powers; or

4340 (d) the owner of a mobile home park, subject to the conditions of Subsection

4341 [41-1a-116\(5\)](#).

4342 (5) A governmental entity may disclose a private, controlled, or protected record to  
4343 another governmental entity, political subdivision, [another] state, the United States, or a  
4344 foreign government only as provided by Section 63G-2-206.

4345 (6) Before releasing a private, controlled, or protected record, the governmental entity  
4346 shall obtain evidence of the requester's identity.

4347 (7) A governmental entity shall disclose a record pursuant to the terms of a court order  
4348 signed by a judge from a court of competent jurisdiction, provided that:

4349 (a) the record deals with a matter in controversy over which the court has jurisdiction;

4350 (b) the court has considered the merits of the request for access to the record;

4351 (c) the court has considered and, where appropriate, limited the requester's use and  
4352 further disclosure of the record in order to protect:

4353 (i) privacy interests in the case of private or controlled records;

4354 (ii) business confidentiality interests in the case of records protected under Subsection  
4355 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

4356 (iii) privacy interests or the public interest in the case of other protected records;

4357 (d) to the extent the record is properly classified private, controlled, or protected, the  
4358 interests favoring access, considering limitations thereon, are greater than or equal to the  
4359 interests favoring restriction of access; and

4360 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection  
4361 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

4362 (8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or  
4363 authorize disclosure of private or controlled records for research purposes if the governmental  
4364 entity:

4365 (i) determines that the research purpose cannot reasonably be accomplished without  
4366 use or disclosure of the information to the researcher in individually identifiable form;

4367 (ii) determines that:

4368 (A) the proposed research is bona fide; and

4369 (B) the value of the research is greater than or equal to the infringement upon personal

4370 privacy;

4371 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of  
4372 the records; and

4373 (B) requires the removal or destruction of the individual identifiers associated with the  
4374 records as soon as the purpose of the research project has been accomplished;

4375 (iv) prohibits the researcher from:

4376 (A) disclosing the record in individually identifiable form, except as provided in  
4377 Subsection (8)(b); or

4378 (B) using the record for purposes other than the research approved by the governmental  
4379 entity; and

4380 (v) secures from the researcher a written statement of the researcher's understanding of  
4381 and agreement to the conditions of this Subsection (8) and the researcher's understanding that  
4382 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution  
4383 under Section [63G-2-801](#).

4384 (b) A researcher may disclose a record in individually identifiable form if the record is  
4385 disclosed for the purpose of auditing or evaluating the research program and no subsequent use  
4386 or disclosure of the record in individually identifiable form will be made by the auditor or  
4387 evaluator except as provided by this section.

4388 (c) A governmental entity may require indemnification as a condition of permitting  
4389 research under this Subsection (8).

4390 (d) A governmental entity may not disclose or authorize disclosure of a private record  
4391 for research purposes as described in this Subsection (8) if the private record is a record  
4392 described in Subsection [63G-2-302\(1\)\(u\)](#).

4393 (9) (a) Under Subsections [63G-2-201\(5\)\(b\)](#) and [63G-2-401\(6\)](#), a governmental entity  
4394 may disclose to persons other than those specified in this section records that are:

4395 (i) private under Section [63G-2-302](#); or

4396 (ii) protected under Section [63G-2-305](#), subject to Section [63G-2-309](#) if a claim for  
4397 business confidentiality has been made under Section [63G-2-309](#).

4398 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the  
4399 disclosure to persons other than those specified in this section of records that are:  
4400 (i) private under Section 63G-2-302;  
4401 (ii) controlled under Section 63G-2-304; or  
4402 (iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for  
4403 business confidentiality has been made under Section 63G-2-309.

4404 (c) Under Subsection 63G-2-404~~(8)~~(7), the court may require the disclosure of  
4405 records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or  
4406 protected under Section 63G-2-305 to persons other than those specified in this section.

4407 (10) A record contained in the Management Information System, created in Section  
4408 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be  
4409 disclosed to any person except the person who is alleged in the report to be a perpetrator of  
4410 abuse, neglect, or dependency.

4411 (11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be  
4412 disclosed as provided in Subsection (1)(e).

4413 (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed  
4414 as provided in Subsection (4)(c) or Section 62A-3-312.

4415 (12) (a) A private, protected, or controlled record described in Section 62A-16-301  
4416 shall be disclosed as required under:

- 4417 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and
- 4418 (ii) Subsections 62A-16-302(1) and (6).

4419 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,  
4420 protected, or controlled.

4421 Section 56. Section 63G-6a-408 is amended to read:

4422 **63G-6a-408. Small purchases.**

4423 (1) As used in this section:

4424 (a) "Annual cumulative threshold" means the maximum total annual amount,  
4425 established by the applicable rulemaking authority under Subsection (2)~~(a)~~(b)(i)(A), that a

4426 procurement unit may expend to obtain procurement items from the same source under this  
4427 section.

4428 (b) "Individual procurement threshold" means the maximum amount, established by  
4429 the applicable rulemaking authority under Subsection (2)[~~(a)(ii)~~](b)(i)(B), for which a  
4430 procurement unit may purchase a procurement item under this section.

4431 (c) "Single procurement aggregate threshold" means the maximum total amount,  
4432 established by the applicable rulemaking authority under Subsection (2)[~~(a)(iii)~~](b)(i)(C), that a  
4433 procurement unit may expend to obtain multiple procurement items from one source at one  
4434 time under this section.

4435 (2) (a) The applicable rulemaking authority may make rules governing small purchases  
4436 of any procurement item, including construction, job order contracting, design professional  
4437 services, other professional services, information technology, and goods.

4438 (b) Rules under Subsection (2)(a) may include provisions:

4439 (i) establishing expenditure thresholds, including:

4440 (A) an annual cumulative threshold;

4441 (B) an individual procurement threshold; and

4442 (C) a single procurement aggregate threshold;

4443 (ii) establishing procurement requirements relating to the thresholds described in  
4444 Subsection (2)(b)(i); and

4445 (iii) providing for the use of electronic, telephone, or written quotes.

4446 (3) Expenditures made under this section by a procurement unit may not exceed a  
4447 threshold established by the applicable rulemaking authority, unless the chief procurement  
4448 officer or the head of a procurement unit with independent procurement authority gives written  
4449 authorization to exceed the threshold that includes the reasons for exceeding the threshold.

4450 (4) Except as provided in Subsection (5), an executive branch procurement unit may  
4451 not obtain a procurement item through a small purchase standard procurement process if the  
4452 procurement item may be obtained through a state cooperative contract or a contract awarded  
4453 by the chief procurement officer under Subsection [63G-6a-2105\(1\)](#).

4454 (5) Subsection (4) does not apply if:  
4455 (a) the procurement item is obtained for an unanticipated, urgent or unanticipated,  
4456 emergency condition, including:  
4457 (i) an item needed to avoid stopping a public construction project;  
4458 (ii) an immediate repair to a facility or equipment; or  
4459 (iii) another emergency condition; or  
4460 (b) the chief procurement officer or the head of a procurement unit that is an executive  
4461 branch procurement unit with independent procurement authority:  
4462 (i) determines in writing that it is in the best interest of the procurement unit to obtain  
4463 an individual procurement item outside of the state contract, comparing:  
4464 (A) the contract terms and conditions applicable to the procurement item under the  
4465 state contract with the contract terms and conditions applicable to the procurement item if the  
4466 procurement item is obtained outside of the state contract;  
4467 (B) the maintenance and service applicable to the procurement item under the state  
4468 contract with the maintenance and service applicable to the procurement item if the  
4469 procurement item is obtained outside of the state contract;  
4470 (C) the warranties applicable to the procurement item under the state contract with the  
4471 warranties applicable to the procurement item if the procurement item is obtained outside of  
4472 the state contract;  
4473 (D) the quality of the procurement item under the state contract with the quality of the  
4474 procurement item if the procurement item is obtained outside of the state contract; and  
4475 (E) the cost of the procurement item under the state contract with the cost of the  
4476 procurement item if the procurement item is obtained outside of the state contract;  
4477 (ii) for a procurement item that, if defective in its manufacture, installation, or  
4478 performance, may result in serious physical injury, death, or substantial property damage,  
4479 determines in writing that the terms and conditions, relating to liability for injury, death, or  
4480 property damage, available from the source other than the contractor who holds the state  
4481 contract, are similar to, or better than, the terms and conditions available under the state

4482 contract; and

4483 (iii) grants an exception, in writing, to the requirement described in Subsection (4).

4484 (6) Except as otherwise expressly provided in this section, a procurement unit:

4485 (a) may not use the small purchase standard procurement process described in this  
4486 section for ongoing, continuous, and regularly scheduled procurements that exceed the annual  
4487 cumulative threshold; and

4488 (b) shall make its ongoing, continuous, and regularly scheduled procurements that  
4489 exceed the annual cumulative threshold through a contract awarded through another standard  
4490 procurement process described in this chapter or an applicable exception to another standard  
4491 procurement process, described in Part 8, Exceptions to Procurement Requirements.

4492 (7) This section does not prohibit regularly scheduled payments for a procurement item  
4493 obtained under another provision of this chapter.

4494 (8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement  
4495 into one or more smaller procurements with the intent to make a procurement:

4496 (i) qualify as a small purchase, if, before dividing the procurement, it would not have  
4497 qualified as a small purchase; or

4498 (ii) meet a threshold established by rule made by the applicable rulemaking authority,  
4499 if, before dividing the procurement, it would not have met the threshold.

4500 (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is  
4501 guilty of:

4502 (i) a second degree felony, if the value of the procurement before being divided is  
4503 \$1,000,000 or more;

4504 (ii) a third degree felony, if the value of the procurement before being divided is  
4505 \$250,000 or more but less than \$1,000,000;

4506 (iii) a class A misdemeanor, if the value of the procurement before being divided is  
4507 \$100,000 or more but less than \$250,000; or

4508 (iv) a class B misdemeanor, if the value of the procurement before being divided is less  
4509 than \$100,000.

4510 (9) A division of a procurement that is prohibited under Subsection (8) includes doing  
4511 any of the following with the intent or knowledge described in Subsection (8):

4512 (a) making two or more separate purchases;

4513 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

4514 or

4515 (c) making smaller purchases over a period of time.

4516 (10) A person who violates Subsection (8) is subject to the criminal penalties described  
4517 in Section [63G-6a-2405](#).

4518 (11) The Division of Finance within the Department of Administrative Services may  
4519 conduct an audit of an executive branch procurement unit to verify compliance with the  
4520 requirements of this section.

4521 (12) An executive branch procurement unit may not make a small purchase after  
4522 January 1, 2014, unless the chief procurement officer certifies that the person responsible for  
4523 procurements in the procurement unit has satisfactorily completed training on this section and  
4524 the rules made under this section.

4525 Section 57. Section **63G-6a-2105** is amended to read:

4526 **63G-6a-2105. Cooperative procurements -- Contracts with federal government --**  
4527 **Regional solicitations.**

4528 (1) The chief procurement officer may, in accordance with the requirements of this  
4529 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a  
4530 cooperative procurement, with:

4531 (a) another state;

4532 (b) a cooperative purchasing organization; or

4533 (c) a public entity inside or outside the state.

4534 (2) A public entity, nonprofit organization, or, as permitted under federal law, an  
4535 agency of the federal government, may obtain a procurement item from a state cooperative  
4536 contract or a contract awarded by the chief procurement officer under Subsection (1), without  
4537 signing a participating addendum if the solicitation issued by the chief procurement officer to

4538 obtain the contract includes a statement indicating that the resulting contract will be issued for  
4539 the benefit of public entities and, as applicable, nonprofit organizations and agencies of the  
4540 federal government.

4541 (3) Except as provided in Section 63G-6a-408, or as otherwise provided in this chapter,  
4542 an executive branch procurement unit may not obtain a procurement item from a source other  
4543 than a state cooperative contract or a contract awarded by the chief procurement officer under  
4544 Subsection (1), if the procurement item is available under a state cooperative contract or a  
4545 contract awarded by the chief procurement officer under Subsection (1).

4546 (4) A Utah procurement unit may:

4547 (a) contract with the federal government without going through a standard procurement  
4548 process or an exception to a standard procurement process, described in Part 8, Exceptions to  
4549 Procurement Requirements, if the procurement item obtained under the contract is provided:

4550 (i) directly by the federal government and not by a person contracting with the federal  
4551 government; or

4552 (ii) by a person under contract with the federal government that obtained the contract in  
4553 a manner that substantially complies with the provisions of this chapter;

4554 (b) participate in, sponsor, conduct, or administer a cooperative procurement with  
4555 another Utah procurement unit or another public entity in Utah, if:

4556 (i) each party unit involved in the cooperative procurement enters into an agreement  
4557 describing the rights and duties of each party;

4558 (ii) the procurement is conducted, and the contract awarded, in accordance with the  
4559 requirements of this chapter;

4560 (iii) the solicitation:

4561 (A) clearly indicates that the procurement is a cooperative procurement; and

4562 (B) identifies each party that may purchase under the resulting contract; and

4563 (iv) each party involved in the cooperative procurement signs a participating addendum  
4564 describing its rights and obligations in relation to the resulting contract; or

4565 (c) purchase under, or otherwise participate in, an agreement or contract of a

4566 cooperative purchasing organization, if:

4567 (i) each party involved in the cooperative procurement enters into an agreement  
4568 describing the rights and duties of each party;

4569 (ii) the procurement was conducted in accordance with the requirements of this  
4570 chapter;

4571 (iii) the solicitation:

4572 (A) clearly indicates that the procurement is a cooperative procurement; and

4573 (B) identifies each party that may purchase under the resulting contract; and

4574 (iv) each party involved in the cooperative procurement signs a participating addendum  
4575 describing its rights and obligations in relation to the resulting contract.

4576 (5) A procurement unit may not obtain a procurement item under a contract that results  
4577 from a cooperative procurement described in Subsection (4), if the procurement unit:

4578 (a) is not identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); or

4579 (b) does not sign a participating addendum to the contract as required by this section.

4580 (6) A procurement unit, other than a legislative procurement unit or a judicial  
4581 procurement unit, may not obtain a procurement item under a contract held by the United  
4582 States General Services Administration, unless, based upon documentation provided by the  
4583 procurement unit, the director of the state Division of Purchasing and General Services  
4584 determines in writing that the United States General Services Administration procured the  
4585 contract in a manner that substantially complies with the provisions of this chapter.

4586 (7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued  
4587 by the chief procurement officer for the procurement of a procurement item within a specified  
4588 geographical region of the state.

4589 (b) In addition to any other duty or authority under this section, the chief procurement  
4590 officer shall:

4591 (i) after considering board recommendations, develop a plan for issuing regional  
4592 solicitations; and

4593 [~~(ii) present the plan to the Government Operations Interim Committee by September~~

4594 1, 2014; and]

4595 [(iii)] (ii) after developing a plan, issue regional solicitations for procurement items in  
4596 accordance with the plan and this chapter.

4597 (c) A plan under Subsection (7)(b) shall:

4598 (i) define the proposed regional boundaries for regional solicitations;

4599 (ii) specify the types of procurement items for which a regional solicitation may be  
4600 issued; and

4601 (iii) identify the regional solicitations that the chief procurement officer plans to issue.

4602 (d) A regional solicitation shall require that a person responding to the solicitation offer  
4603 similar warranties and submit to similar obligations as are standard under other state  
4604 cooperative contracts.

4605 (e) A procurement item that is available under a state cooperative contract may not be  
4606 provided under a contract pursuant to a regional solicitation until after the expiration of the  
4607 state cooperative contract.

4608 Section 58. Section **63H-7a-603** is amended to read:

4609 **63H-7a-603. Financial officer -- Duties.**

4610 (1) The executive director shall appoint a financial officer for the Administrative  
4611 Services Division with the approval of the board. The financial officer shall be responsible for  
4612 accounting for the authority, including:

4613 (a) safekeeping and investment of public funds of the authority, including the funds  
4614 expended from the restricted accounts created in Sections 69-2-5.5, 69-2-5.6, 69-2-5.7, and  
4615 69-2-5.8;

4616 (b) the proper collection, deposit, disbursement, and management of the public funds  
4617 of the authority in accordance with Title 51, Chapter 7, State Money Management Act;

4618 (c) ~~have~~ having authority to sign all bills payable, notes, checks, drafts, warrants, or  
4619 other negotiable instruments in the absence of the executive director and the executive  
4620 director's designated employee;

4621 (d) ~~provide~~ providing to the board and the executive director a statement of the

4622 condition of the finances of the authority, at least annually and at such other times as shall be  
4623 requested by the board; and

4624 (e) [~~perform~~] performing all other duties incident to the financial officer.

4625 (2) The financial officer shall:

4626 (a) be bonded in an amount established by the State Money Management Council; and

4627 (b) file written reports with the State Money Management Council pursuant to Section  
4628 51-7-15.

4629 Section 59. Section **63I-1-220** is amended to read:

4630 **63I-1-220. Repeal dates, Title 20A.**

4631 On January 1, 2017:

4632 (1) Subsection 20A-1-102(54) is repealed.

4633 (2) Subsection 20A-2-102.5(1) the language that states "20A-4-108, or" is repealed.

4634 (3) Subsection 20A-2-201(3) the language that states "Except as provided in  
4635 Subsection 20A-4-108(5)," is repealed.

4636 (4) Subsection 20A-2-202(3)(a) the language that states "Except as provided in  
4637 Subsection 20A-4-108(6)," is repealed.

4638 (5) Subsection 20A-2-204(5)(a) the language that states "Except as provided in  
4639 Subsection 20A-4-108(7)," is repealed.

4640 (6) Subsection 20A-2-205(7)(a) the language that states "Except as provided in  
4641 Subsection 20A-4-108(8)," is repealed.

4642 (7) Subsection 20A-2-206(8)[~~(b)~~](c) the language that states "Except as provided in  
4643 Subsection 20A-4-108(9)," is repealed.

4644 (8) Subsection 20A-2-307(2)(a) is repealed.

4645 (9) Subsection 20A-4-107(2)(b) the language that states "Except as provided in  
4646 Subsection 20A-4-108(10)," is repealed.

4647 (10) Subsection 20A-4-107(3) the language that states "or if the voter is, in accordance  
4648 with the pilot project, registered to vote under Subsection 20A-4-108(10)," is repealed.

4649 (11) Subsection 20A-4-107(4) the language that states "Except as provided in

4650 Subsection 20A-4-108(12)," is repealed.

4651 (12) Section 20A-4-108 is repealed.

4652 Section 60. Section 63I-2-217 is amended to read:

4653 **63I-2-217. Repeal dates -- Title 17.**

4654 [~~(1)~~ Subsection ~~17-8-7~~(2), the language that states "Sections ~~17-19-1~~ to ~~17-19-28~~ and"  
4655 and ", as applicable," is repealed January 1, 2015.]

4656 [~~(2)~~ Section ~~17-15-30~~ is repealed July 1, 2015.]

4657 [~~(3)~~ Title 17, Chapter 19, County Auditor, is repealed January 1, 2015.]

4658 [~~(4)~~ Subsection ~~17-24-1~~(4)(b), the language that states ", as applicable, Sections  
4659 ~~17-19-1~~, ~~17-19-3~~, and ~~17-19-5~~ or" is repealed January 1, 2015.]

4660 [~~(5)~~ Subsection ~~17-24-4~~(2), the language that states ", as applicable, Subsection  
4661 ~~17-19-3~~(3)(b) or" is repealed January 1, 2015.]

4662 [~~(6)~~ (1) Subsection ~~17-27a-102~~(1)(b), the language that states "or a designated  
4663 mountainous planning district" is repealed June 1, 2016.

4664 [~~(7)~~ (2) (a) Subsection ~~17-27a-103~~(15)(b) is repealed June 1, 2016.

4665 (b) Subsection ~~17-27a-103~~(34) is repealed June 1, 2016.

4666 [~~(8)~~ (3) Subsection ~~17-27a-210~~(2)(a), the language that states "or the mountainous  
4667 planning district area" is repealed June 1, 2016.

4668 [~~(9)~~ (4) (a) Subsection ~~17-27a-301~~(1)(b)(iii) is repealed June 1, 2016.

4669 (b) Subsection ~~17-27a-301~~(1)(c) is repealed June 1, 2016.

4670 (c) Subsection ~~17-27a-301~~(2)(a), the language that states "described in Subsection  
4671 (1)(a) or (c)" is repealed June 1, 2016.

4672 [~~(10)~~ (5) Subsection ~~17-27a-302~~(1), the language that states ", or mountainous  
4673 planning district" and "or the mountainous planning district," is repealed June 1, 2016.

4674 [~~(11)~~ (6) Subsection ~~17-27a-305~~(1)(a), the language that states "a mountainous  
4675 planning district or" and ", as applicable" is repealed June 1, 2016.

4676 [~~(12)~~ (7) (a) Subsection ~~17-27a-401~~(1)(b)(ii) is repealed June 1, 2016.

4677 (b) Subsection ~~17-27a-401~~(6) is repealed June 1, 2016.

- 4678 ~~[(13)]~~ (8) (a) Subsection ~~17-27a-403~~(1)(b)(ii) is repealed June 1, 2016.
- 4679 (b) Subsection ~~17-27a-403~~(1)(c)(iii) is repealed June 1, 2016.
- 4680 (c) Subsection (2)(a)(iii), the language that states "or the mountainous planning  
4681 district" is repealed June 1, 2016.
- 4682 (d) Subsection ~~17-27a-403~~(2)(c)(i), the language that states "or mountainous planning  
4683 district" is repealed June 1, 2016.
- 4684 ~~[(14)]~~ (9) Subsection ~~17-27a-502~~(1)(d)(i)(B) is repealed June 1, 2016.
- 4685 ~~[(15)]~~ (10) Subsection ~~17-27a-505.5~~(2)(a)(iii) is repealed June 1, 2016.
- 4686 ~~[(16)]~~ (11) Subsection ~~17-27a-602~~(1)(b), the language that states "or, in the case of a  
4687 mountainous planning district, the mountainous planning district" is repealed June 1, 2016.
- 4688 ~~[(17)]~~ (12) Subsection ~~17-27a-604~~(1)(b)(i)(B) is repealed June 1, 2016.
- 4689 ~~[(18)]~~ (13) Subsection ~~17-27a-605~~(1), the language that states "or mountainous  
4690 planning district land" is repealed June 1, 2016.
- 4691 ~~[(19)]~~ (14) Title 17, Chapter 27a, Part 9, Mountainous Planning District, is repealed  
4692 June 1, 2016.
- 4693 ~~[(20) (a) Subsection 17-36-3(5)(a), the language that states "for a county of the second,  
4694 third, fourth, fifth, or sixth class, the county auditor, county clerk, or county executive as  
4695 provided in Subsection 17-19-19(1); or" is repealed January 1, 2015.]~~
- 4696 ~~[(b) Subsection 17-36-3(5)(b), the language that states "for a county of the first class,"  
4697 is repealed January 1, 2015.]~~
- 4698 ~~[(c) Subsection 17-36-3(7), the language that states "17-19-3," and ", or 17-24-4, as  
4699 applicable" is repealed January 1, 2015.]~~
- 4700 ~~[(21) Subsection 17-36-9(1)(a)(iii), the language that states "17-36-10.1, as applicable,  
4701 or" is repealed January 1, 2015.]~~
- 4702 ~~[(22) Subsection 17-36-10(1), the language that states the following is repealed January  
4703 1, 2015:]~~
- 4704 ~~["(1) (a) On or before December 31, 2014, a county of the second, third, fourth, fifth,  
4705 or sixth class is not subject to the provisions of this section; and"]~~

4706            [~~(b) on or after January 1, 2015, a county of the second, third, fourth, fifth, or sixth~~  
4707 ~~class is subject to the provisions of this section."~~.]

4708            [~~(23) Section 17-36-10.1 is repealed January 1, 2015.~~]

4709            [~~(24) Subsection 17-36-11(1), the language that states the following is repealed January~~  
4710 ~~1, 2015.~~]

4711            [~~"(1) (a) On or before December 31, 2014, a county of the second, third, fourth, fifth,~~  
4712 ~~or sixth class is not subject to the provisions of this section; and~~]

4713            [~~(b) on or after January 1, 2015, a county of the second, third, fourth, fifth, or sixth~~  
4714 ~~class is subject to the provisions of this section."~~.]

4715            [~~(25) Section 17-36-11.1 is repealed January 1, 2015.~~]

4716            [~~(26) Subsection 17-36-15(1), the language that states the following is repealed January~~  
4717 ~~1, 2015.~~]

4718            [~~"(1) (a) On or before December 31, 2014, a county of the second, third, fourth, fifth,~~  
4719 ~~or sixth class is not subject to the provisions of this section; and~~]

4720            [~~(b) on or after January 1, 2015, a county of the second, third, fourth, fifth, or sixth~~  
4721 ~~class is subject to the provisions of this section."~~.]

4722            [~~(27) Section 17-36-15.1 is repealed January 1, 2015.~~]

4723            [~~(28) Subsection 17-36-20(1), the language that states the following is repealed January~~  
4724 ~~1, 2015.~~]

4725            [~~"(1) (a) On or before December 31, 2014, a county of the second, third, fourth, fifth,~~  
4726 ~~or sixth class is not subject to the provisions of this section; and~~]

4727            [~~(b) on or after January 1, 2015, a county of the second, third, fourth, fifth, or sixth~~  
4728 ~~class is subject to the provisions of this section."~~.]

4729            [~~(29) Section 17-36-20.1 is repealed January 1, 2015.~~]

4730            [~~(30) Subsection 17-36-32(4), the language that states "or 17-36-20.1, as applicable,~~  
4731 ~~and" is repealed January 1, 2015.~~]

4732            [~~(31) Subsection 17-36-43(1), the language that states the following is repealed January~~  
4733 ~~1, 2015.~~]

4734           ~~["(1) (a) On or before December 31, 2014, a county of the second, third, fourth, fifth,~~  
4735 ~~or sixth class is not subject to the provisions of this section; and]~~

4736           ~~[(b) on or after January 1, 2015, a county of the second, third, fourth, fifth, or sixth~~  
4737 ~~class is subject to the provisions of this section.".]~~

4738           ~~[(32) Section 17-36-43.1 is repealed January 1, 2015.]~~

4739           ~~[(33) Section 17-36-44, the language that states "or 17-36-43.1, as applicable" is~~  
4740 ~~repealed January 1, 2015.]~~

4741           ~~[(34) Subsection 17-50-401(1), the language that states the following is repealed~~  
4742 ~~January 1, 2015:]~~

4743           ~~["(1) (a) On or before December 31, 2014, a county of the second, third, fourth, fifth,~~  
4744 ~~or sixth class is not subject to the provisions of this section; and]~~

4745           ~~[(b) on or after January 1, 2015, a county of the second, third, fourth, fifth, or sixth~~  
4746 ~~class is subject to the provisions of this section.".]~~

4747           ~~[(35) Section 17-50-401.1 is repealed January 1, 2015.]~~

4748           ~~[(36) Subsection 17-52-101(2), the language that states "or 17-52-401.1, as applicable"~~  
4749 ~~is repealed January 1, 2015:]~~

4750           ~~[(37) Subsection 17-52-401(1), the language that states the following is repealed~~  
4751 ~~January 1, 2015:]~~

4752           ~~["(1) (a) On or before December 31, 2014, a county of the second, third, fourth, fifth,~~  
4753 ~~or sixth class is not subject to the provisions of this section; and]~~

4754           ~~[(b) on or after January 1, 2015, a county of the second, third, fourth, fifth, or sixth~~  
4755 ~~class is subject to the provisions of this section.".]~~

4756           ~~[(38) Section 17-52-401.1 is repealed January 1, 2015.]~~

4757           ~~[(39) Subsection 17-52-403(1)(a), the language that states "or 17-52-401.1(2)(c), as~~  
4758 ~~applicable" is repealed January 1, 2015:]~~

4759           ~~[(40) On January 1, 2015, when making the changes in this section, the Office of~~  
4760 ~~Legislative Research and General Counsel shall:]~~

4761           ~~[(a) in addition to its authority under Subsection 36-12-12(3), make corrections~~

4762 necessary to ensure that sections and subsections identified in this section are complete  
4763 sentences and accurately reflect the office's perception of the Legislature's intent; and]  
4764 [~~(b)~~ identify the text of the affected sections and subsections based upon the section  
4765 and subsection numbers used in Laws of Utah 2012, Chapter 17.]

4766 [~~(41)~~] (15) On June 1, 2016, when making the changes in this section, the Office of  
4767 Legislative Research and General Counsel shall:

4768 (a) in addition to its authority under Subsection 36-12-12(3), make corrections  
4769 necessary to ensure that sections and subsections identified in this section are complete  
4770 sentences and accurately reflect the office's perception of the Legislature's intent; and

4771 (b) identify the text of the affected sections and subsections based upon the section and  
4772 subsection numbers used in Laws of Utah 2015, Chapter 465.

4773 Section 61. Section 63I-2-220 is amended to read:

4774 **63I-2-220. Repeal dates, Title 20A.**

4775 [~~(1)~~ Section 20A-3-704 is repealed January 1, 2016.]

4776 [~~(2)~~ Section 20A-5-410 is repealed January 1, 2016.]

4777 [~~(3)~~ (a) Subsection 20A-7-101(1)(a)(i), the language that states "of the first class" and  
4778 "; or" is repealed January 1, 2015.]

4779 [~~(b)~~ Subsection 20A-7-101(1)(a)(ii), the language that states "for a county not  
4780 described in Subsection (1)(a)(i), a person designated as budget officer in Section 17-19-19" is  
4781 repealed January 1, 2015.]

4782 [~~(4)~~ Section 20A-9-403.1 is repealed on January 1, 2015.]

4783 Section 62. Section 63I-2-277 is amended to read:

4784 **63I-2-277. Repeal dates, Title 77.**

4785 [Subsection 77-32-304.5(2)(d)(i), the language that states "or 17-50-401.1, as  
4786 applicable" is repealed January 1, 2015.]

4787 Section 63. Section 63M-4-602 is amended to read:

4788 **63M-4-602. Definitions.**

4789 As used in this part:

4790 (1) "Applicant" means a person that conducts business in the state and that applies for a  
4791 tax credit under this part.

4792 (2) "Fuel standard compliance project" means a project designed to retrofit a fuel  
4793 refinery in order to make the refinery capable of producing fuel that complies with the United  
4794 States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40  
4795 C.F.R. Sec. 79.54.

4796 (3) "High cost infrastructure project" means a project:

4797 (a) (i) [~~a project~~] that expands or creates new industrial, mining, manufacturing, or  
4798 agriculture activity in the state, not including a retail business; or

4799 (ii) that involves new investment of at least \$50,000,000 in an existing industrial,  
4800 mining, manufacturing, or agriculture entity, by the entity;

4801 (b) that requires or is directly facilitated by infrastructure construction; and

4802 (c) for which the cost of infrastructure construction to the entity creating the project is  
4803 greater than:

4804 (i) 10% of the total cost of the project; or

4805 (ii) \$10,000,000.

4806 (4) "Infrastructure" means:

4807 (a) an energy delivery project as defined in Section [63H-2-102](#);

4808 (b) a railroad as defined in Section [54-2-1](#);

4809 (c) a fuel standard compliance project;

4810 (d) a road improvement project;

4811 (e) a water self-supply project;

4812 (f) a water removal system project; or

4813 (g) a project that is designed to:

4814 (i) increase the capacity for water delivery to a water user in the state; or

4815 (ii) increase the capability of an existing water delivery system or related facility to  
4816 deliver water to a water user in the state.

4817 (5) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an

4818 agreement with the office that qualifies the applicant to receive a tax credit as provided in this  
4819 part.

4820 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as  
4821 defined in Section 59-10-1402, of a person described in Subsection (5)(a).

4822 (6) "Infrastructure-related revenue" means an amount of tax revenue, for an entity  
4823 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high  
4824 cost infrastructure project, under:

4825 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

4826 (b) Title 59, Chapter 10, Individual Income Tax Act; and

4827 (c) Title 59, Chapter 12, Sales and Use Tax Act.

4828 (7) "Office" means the Office of Energy Development created in Section 63M-4-401.

4829 (8) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

4830 (9) "Tax credit certificate" means a certificate issued by the office to an infrastructure  
4831 cost-burdened entity that:

4832 (a) lists the name of the infrastructure cost-burdened entity;

4833 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;

4834 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure  
4835 cost-burdened entity under this part; and

4836 (d) includes other information as determined by the office.

4837 Section 64. Section 67-1a-14 is amended to read:

4838 **67-1a-14. Study of signing a petition online -- Report.**

4839 (1) As used in this section, "petition" means a petition to:

4840 (a) qualify a ballot proposition for the ballot under Title 20A, Chapter 7, Issues

4841 Submitted to the Voters;

4842 (b) organize and register a political party under Title 20A, Chapter 8, Political Party  
4843 Formation and Procedures; or

4844 (c) qualify a candidate for the ballot under Title 20A, Chapter 9, Candidate  
4845 Qualifications and Nominating Procedures.

4846           (2) The lieutenant governor, in consultation with a county clerk and municipal clerk,  
4847 shall study a way that a registered voter may sign a petition on the Internet and receive  
4848 information about the petition on the Internet.

4849           (3) The study shall evaluate:

4850           (a) how to sign a petition on the Internet using a holographic signature that is in an  
4851 electronic format maintained by a government agency;

4852           (b) the security, development, ownership, management, format, and content of a secure  
4853 Internet portal or website on which a registered voter may sign a petition;

4854           (c) the security measures necessary to:

4855           (i) verify the identity of a registered voter who signs a petition on the Internet; and

4856           (ii) insure the integrity of a signature;

4857           (d) changes to the process of collecting, verifying, and certifying a signature, if the  
4858 signature is collected on the Internet;

4859           (e) whether verification is necessary for signatures collected on the Internet;

4860           (f) which election official should be responsible for the certification of signatures  
4861 collected on the Internet;

4862           (g) whether signatures on a petition should be public information;

4863           (h) the removal process of a signature collected on the Internet;

4864           (i) what percentage of signatures should be collected on the Internet or in person,  
4865 statewide or by Senate district;

4866           (j) what information regarding the petition should be available on the secure Internet  
4867 portal or website, including who may submit the information and by what deadline information  
4868 should be submitted;

4869           (k) the time the lieutenant governor, county clerk, or municipal clerk may spend  
4870 certifying a petition if a registered voter is allowed to sign a petition on the Internet;

4871           (l) the processes, if any, that exists in other states to allow a registered voter to sign a  
4872 petition on the Internet; and

4873           (m) any other issue related to allowing a registered voter to sign a petition on the

4874 Internet.

4875 ~~[(4) The lieutenant governor shall submit a copy of the study and recommendations, if~~  
4876 ~~any, that result from the study to the Government Operations Interim Committee on or before~~  
4877 ~~September 18, 2013.]~~

4878 Section 65. Section **67-19-13.5** is amended to read:

4879 **67-19-13.5. Department provides payroll services to executive branch agencies --**  
4880 **Report.**

4881 (1) As used in this section:

4882 (a) (i) "Executive branch entity" means a department, division, agency, board, or office  
4883 within the executive branch of state government that employs a person who is paid through the  
4884 central payroll system developed by the Division of Finance as of December 31, 2011.

4885 (ii) "Executive branch entity" does not include:

4886 (A) the Office of the Attorney General;

4887 (B) the Office of the State Treasurer;

4888 (C) the Office of the State Auditor;

4889 (D) the Department of Transportation;

4890 (E) the Department of Technology Services;

4891 (F) the Department of Public Safety;

4892 (G) the Department of Natural Resources; or

4893 (H) the Utah Schools for the Deaf and the Blind.

4894 (b) (i) "Payroll services" means using the central payroll system as directed by the  
4895 Division of Finance to:

4896 (A) enter and validate payroll reimbursements, which include reimbursements for  
4897 mileage, a service award, and other wage types;

4898 (B) calculate, process, and validate a retirement;

4899 (C) enter a leave adjustment; and

4900 (D) certify payroll by ensuring an entry complies with a rule or policy adopted by the  
4901 department or the Division of Finance.

4902 (ii) "Payroll services" does not mean:

4903 (A) a function related to payroll that is performed by an employee of the Division of  
4904 Finance;

4905 (B) a function related to payroll that is performed by an executive branch agency on  
4906 behalf of a person who is not an employee of the executive branch agency;

4907 (C) the entry of time worked by an executive branch agency employee into the central  
4908 payroll system; or

4909 (D) approval or verification by a supervisor or designee of the entry of time worked.

4910 (2) The department shall provide payroll services to all executive branch entities.

4911 (3) After September 19, 2012, an executive branch entity, other than the department or  
4912 the Division of Finance, may not create a full-time equivalent position or part-time position, or  
4913 request an appropriation to fund a full-time equivalent position or part-time position for the  
4914 purpose of providing payroll services to the entity.

4915 ~~[(4) The Department of Transportation, the Department of Technology Services, and~~  
4916 ~~the Department of Natural Resources shall report on the inability to transfer payroll services to~~  
4917 ~~the department or the progress of transferring payroll services to the department:]~~

4918 ~~[(a) to the Government Operations Interim Committee before October 30, 2012; and]~~

4919 ~~[(b) to the Infrastructure and General Government Appropriations Subcommittee on or~~  
4920 ~~before February 11, 2013.]~~

4921 Section 66. Section **70A-2-311** is amended to read:

4922 **70A-2-311. Options and cooperation respecting performance.**

4923 (1) An agreement for sale which is otherwise sufficiently definite (Subsection (3) of  
4924 Section [70A-2-204](#)) to be a contract is not made invalid by the fact that it leaves particulars of  
4925 performance to be specified by one of the parties. Any such specification must be made in good  
4926 faith and within limits set by commercial reasonableness.

4927 (2) Unless otherwise agreed, specifications relating to assortment of the goods are at  
4928 the buyer's option, and except as otherwise provided in Subsections [70A-2-319](#)(1)(c) and (3)  
4929 ~~[of Section [70A-2-319](#)],~~ specifications or arrangements relating to shipment are at the seller's

4930 option.

4931 (3) Where such specification would materially affect the other party's performance but  
4932 is not seasonably made or where one party's cooperation is necessary to the agreed performance  
4933 of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

4934 (a) is excused for any resulting delay in his own performance; and

4935 (b) may also either proceed to perform in any reasonable manner or after the time for a  
4936 material part of his own performance treat the failure to specify or to cooperate as a breach by  
4937 failure to deliver or accept the goods.

4938 Section 67. Section **73-2-22** is amended to read:

4939 **73-2-22. Emergency flood powers -- Action to enforce orders -- Access rights to**  
4940 **private and public property -- Injunctive relief against state engineer's decisions --**  
4941 **Judicial review provisions not applicable.**

4942 (1) Whenever the state engineer, with approval of the chair of the Emergency  
4943 Management Administration Council created in Section **53-2a-105**, makes a written finding  
4944 that any reservoir or stream has reached or will reach during the current water year a level far  
4945 enough above average and in excess of capacity that public safety is or is likely to be  
4946 endangered or that substantial property damage is occurring or is likely to occur, [~~he~~] the state  
4947 engineer shall have emergency powers until the danger to the public and property is abated.

4948 (2) Emergency powers shall consist of the authority to control stream flow and  
4949 reservoir storage or release.

4950 (3) The state engineer must protect existing water rights to the maximum extent  
4951 possible when exercising emergency powers.

4952 (4) Any action taken by the state engineer under this section shall be by written order.

4953 (5) If any person refuses or neglects to comply with any order of the state engineer  
4954 issued pursuant to his emergency powers, the state engineer may bring action in the name of  
4955 the state in the district court to enforce them.

4956 (6) In carrying out [~~his~~] the state engineer's emergency powers, the state engineer shall  
4957 have rights of access to private and public property.

4958 (7) Any person affected by a decision of the state engineer made under [his] the state  
4959 engineer's emergency powers shall have the right to seek injunctive relief, including temporary  
4960 restraining orders and temporary injunctions in any district court of the county where that  
4961 person resides.

4962 (8) No order of the state engineer shall be enjoined or set aside unless shown by clear  
4963 and convincing evidence that an emergency does not in fact exist or that the order of the state  
4964 engineer is arbitrary or capricious.

4965 (9) The provisions of Sections 73-3-14 and 73-3-15 shall not be applicable to any order  
4966 of the state engineer issued pursuant to this section.

4967 Section 68. Section 73-22-3 is amended to read:

4968 **73-22-3. Definitions.**

4969 As used in this chapter:

4970 (1) "Correlative rights" mean the rights of each geothermal owner in a geothermal area  
4971 to produce without waste his just and equitable share of the geothermal resource underlying the  
4972 geothermal area.

4973 (2) "Division" means the Division of Water Rights, Department of Natural Resources.

4974 (3) "Geothermal area" means the general land area which is underlain or reasonably  
4975 appears to be underlain by geothermal resources.

4976 (4) "Geothermal fluid" means water and steam at temperatures greater than 120 degrees  
4977 centigrade naturally present in a geothermal system.

4978 (5) (a) "Geothermal resource" means:

4979 (i) the natural heat of the earth at temperatures greater than 120 degrees centigrade; and

4980 (ii) the energy, in whatever form, including pressure, present in, resulting from, created  
4981 by, or which may be extracted from that natural heat, directly or through a material medium.

4982 (b) "Geothermal resource" does not include geothermal fluids.

4983 (6) "Geothermal system" means any strata, pool, reservoir, or other geologic formation  
4984 containing geothermal resources.

4985 (7) "Material medium" means geothermal fluids, or water and other substances

4986 artificially introduced into a geothermal system to serve as a heat transfer medium.

4987 (8) "Operator" means any person drilling, maintaining, operating, producing, or in  
4988 control of any well.

4989 (9) "Owner" means a person who has the right to drill into, produce, and make use of  
4990 the geothermal resource.

4991 (10) "Person" means any individual, business entity (corporate or otherwise), or  
4992 political subdivision of this or any other state.

4993 (11) (a) "Waste" means any inefficient, excessive, or improper production, use, or  
4994 dissipation of geothermal resources.

4995 (b) Wasteful practices include~~[-but are not limited to]:~~

4996 ~~[(a)]~~ (i) transporting or storage methods that cause or tend to cause unnecessary surface  
4997 loss of geothermal resources; or

4998 ~~[(b)]~~ (ii) locating, spacing, constructing, equipping, operating, producing, or venting of  
4999 any well in a manner that results or tends to result in unnecessary surface loss or in reducing  
5000 the ultimate economic recovery of geothermal resources.

5001 (12) "Well" means any well drilled, converted, or reactivated for the discovery, testing,  
5002 production, or subsurface injection of geothermal resources.

5003 Section 69. Section **78B-14-613** is amended to read:

5004 **78B-14-613. Jurisdiction to modify child support order of another state when**  
5005 **individual parties reside in this state.**

5006 (1) If all of the parties who are individuals reside in this state and the child does not  
5007 reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the  
5008 issuing state's child support order in a proceeding to register that order.

5009 (2) A tribunal of this state exercising jurisdiction under this section shall apply the  
5010 provisions of ~~[Parts]~~ this part, Part 1, General Provisions, and Part 2, Jurisdiction, ~~[this part]~~,  
5011 and the procedural and substantive law of this state to the proceeding for enforcement or  
5012 modification. ~~[Parts]~~ Part 3, Civil Provisions of General Application, Part 4, Establishment of  
5013 Support Order or Determination of Parentage, Part 5, Enforcement of Support Order Without

5014 Registration, Part 7, Support Proceedings Under Convention, and Part 8, Rendition, do not  
5015 apply.