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REVISOR'S - TECHNICAL CORRECTIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies parts of the Utah Code to make technical corrections, including eliminating references to repealed provisions, making minor wording changes, updating cross-references, and correcting numbering.

Highlighted Provisions:

This bill:

- modifies parts of the Utah Code to make technical corrections, including eliminating references to repealed provisions, making minor wording changes, updating cross-references, correcting numbering, and fixing errors that were created from the previous year's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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-2-6, as last amended by Laws of Utah 2009, Chapter 388

7-17-9, as last amended by Laws of Utah 2010, Chapter 378

10-3-717, as last amended by Laws of Utah 2010, Chapter 378

11-14-103, as last amended by Laws of Utah 2013, Chapter 159

H.B. 155

11-27-9, as enacted by Laws of Utah 1984, Chapter 6
13-35-103, as last amended by Laws of Utah 2010, Chapter 286
15-7-4, as enacted by Laws of Utah 1983, Chapter 62
15A-2-103, as last amended by Laws of Utah 2013, Chapters 279 and 297
16-6a-1701, as last amended by Laws of Utah 2014, Chapter 189
17-53-301, as last amended by Laws of Utah 2014, Chapter 189
17B-2a-404, as last amended by Laws of Utah 2014, Chapters 357, 362, and 377
17B-2a-405, as last amended by Laws of Utah 2008, Chapter 360
17B-2a-1007, as last amended by Laws of Utah 2008, Chapter 360
20A-1-103, as enacted by Laws of Utah 2014, Chapter 17
20A-7-613, as enacted by Laws of Utah 2014, Chapter 395
23-25-2, as enacted by Laws of Utah 1992, Chapter 260
26-18-3.6, as last amended by Laws of Utah 2012, Chapter 41
31A-8a-103, as last amended by Laws of Utah 2013, Chapter 135
31A-17-503, as last amended by Laws of Utah 2011, Chapter 297
31A-17-512, as last amended by Laws of Utah 2011, Chapter 297
31A-22-408, as last amended by Laws of Utah 2011, Chapter 297
31A-22-626, as last amended by Laws of Utah 2013, Chapter 167
31A-22-640, as last amended by Laws of Utah 2014, Chapter 219
32B-3-201, as enacted by Laws of Utah 2010, Chapter 276
32B-8-102, as enacted by Laws of Utah 2010, Chapter 276
34-48-202, as enacted by Laws of Utah 2013, Chapter 94
34A-2-111, as last amended by Laws of Utah 2013, Chapter 72
34A-2-410, as last amended by Laws of Utah 2008, Chapter 349
36-11-401, as last amended by Laws of Utah 2014, Chapter 335
38-1a-102, as last amended by Laws of Utah 2014, Chapter 293
38-8-1, as last amended by Laws of Utah 2013, Chapter 163
41-6a-1011, as last amended by Laws of Utah 2014, Chapter 225
41-6a-1620, as renumbered and amended by Laws of Utah 2005, Chapter 2
41-6a-1642, as last amended by Laws of Utah 2013, Chapter 113
47-3-102, as renumbered and amended by Laws of Utah 2013, Chapter 155

48-1-32, Utah Code Annotated 1953
48-1-35, Utah Code Annotated 1953
48-1-38, Utah Code Annotated 1953
49-11-801, as last amended by Laws of Utah 2010, Chapter 266
49-20-411, as last amended by Laws of Utah 2014, Chapter 302
51-8-301, as enacted by Laws of Utah 2007, Chapter 59
53-2a-105, as renumbered and amended by Laws of Utah 2013, Chapter 295
53-2a-202, as renumbered and amended by Laws of Utah 2013, Chapter 295
53-2a-204, as last amended by Laws of Utah 2013, Chapter 304 and renumbered and amended by Laws of Utah 2013, Chapter 295
53-2a-1104, as renumbered and amended by Laws of Utah 2013, Chapter 295
53-5a-104, as enacted by Laws of Utah 2014, Chapter 431
53-5c-201, as enacted by Laws of Utah 2013, Chapter 188
53A-1-603, as last amended by Laws of Utah 2013, Chapter 161
53A-1-1104, as last amended by Laws of Utah 2014, Chapter 403
53A-1a-508, as repealed and reenacted by Laws of Utah 2014, Chapter 363
53A-1a-601, as last amended by Laws of Utah 2013, Chapter 413
53A-12-102, as last amended by Laws of Utah 2013, Chapter 377
53A-15-603, as enacted by Laws of Utah 2010, Chapter 207
53A-17a-165, as last amended by Laws of Utah 2014, Chapter 193
53B-24-102, as renumbered and amended by Laws of Utah 2013, Chapter 28
53B-24-202, as renumbered and amended by Laws of Utah 2013, Chapter 28
53B-24-303, as renumbered and amended by Laws of Utah 2013, Chapter 28
53B-24-402, as last amended by Laws of Utah 2013, Chapter 167 and renumbered and amended by Laws of Utah 2013, Chapter 28
53D-1-301, as enacted by Laws of Utah 2014, Chapter 426
53D-1-402, as enacted by Laws of Utah 2014, Chapter 426
57-8a-209, as last amended by Laws of Utah 2014, Chapter 397
57-17-3, as last amended by Laws of Utah 2014, Chapter 397
57-17-5, as repealed and reenacted by Laws of Utah 2014, Chapter 397
58-11a-302, as last amended by Laws of Utah 2013, Chapter 13

58-17b-308, as last amended by Laws of Utah 2007, Chapter 279
58-31d-103, as last amended by Laws of Utah 2007, Chapter 57
58-37-2, as last amended by Laws of Utah 2012, Chapter 297
58-37-4, as last amended by Laws of Utah 2013, Chapters 83 and 88
58-37a-6, as last amended by Laws of Utah 2002, Chapter 185
58-37c-3, as last amended by Laws of Utah 2013, Chapters 262, 278, and 413
58-37c-15, as last amended by Laws of Utah 2002, Chapter 185
58-37d-7, as last amended by Laws of Utah 2002, Chapter 185
58-55-302, as last amended by Laws of Utah 2014, Chapter 402
58-60-103, as last amended by Laws of Utah 2012, Chapter 179
58-67-302.7, as enacted by Laws of Utah 2011, Chapter 206
59-2-1017, as enacted by Laws of Utah 2013, Chapter 180
59-2-1326, as repealed and reenacted by Laws of Utah 1988, Chapter 3
59-12-353, as last amended by Laws of Utah 2004, Chapters 156 and 255
61-2c-502, as last amended by Laws of Utah 2010, Chapter 379
62A-2-121, as last amended by Laws of Utah 2009, Chapter 75
62A-4a-102, as last amended by Laws of Utah 2012, Chapter 293
63A-3-502, as last amended by Laws of Utah 2013, Chapter 74
63G-2-202, as last amended by Laws of Utah 2014, Chapter 373
63G-2-703, as renumbered and amended by Laws of Utah 2008, Chapter 382
63G-6a-303, as last amended by Laws of Utah 2014, Chapter 196
63G-6a-904, as last amended by Laws of Utah 2014, Chapter 196
63G-6a-1702, as last amended by Laws of Utah 2014, Chapter 196
63G-10-403, as last amended by Laws of Utah 2012, Chapters 91, 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347
63G-12-102, as enacted by Laws of Utah 2011, Chapter 18
63H-1-701, as last amended by Laws of Utah 2010, Chapter 90
63H-7-103, as renumbered and amended by Laws of Utah 2014, Chapter 320
63I-1-213, as last amended by Laws of Utah 2013, Chapters 278 and 421
63I-1-226, as last amended by Laws of Utah 2014, Chapters 25 and 118
63I-1-235, as last amended by Laws of Utah 2014, Chapter 127

63I-2-219, as enacted by Laws of Utah 2014, Chapter 227
63I-2-253, as last amended by Laws of Utah 2014, Chapters 102, 189, 372, and 393
63I-2-258, as last amended by Laws of Utah 2013, Chapter 423
63I-2-262, as enacted by Laws of Utah 2012, Chapter 281
63I-2-263, as last amended by Laws of Utah 2014, Chapters 172, 423, and 427
63I-5-302, as repealed and reenacted by Laws of Utah 2014, Chapter 433
63M-1-3208, as enacted by Laws of Utah 2014, Chapter 318
65A-7-5, as last amended by Laws of Utah 2011, Chapter 256
67-5-3, as last amended by Laws of Utah 1982, Chapter 76
67-19a-202, as last amended by Laws of Utah 2013, Chapter 427
67-19a-402.5, as enacted by Laws of Utah 2013, Chapter 427
70A-2-601, as enacted by Laws of Utah 1965, Chapter 154
70A-2-610, as enacted by Laws of Utah 1965, Chapter 154
70A-2-615, as enacted by Laws of Utah 1965, Chapter 154
70A-4a-207, as last amended by Laws of Utah 1993, Chapter 237
72-4-302, as last amended by Laws of Utah 2014, Chapter 387
73-2-22, as last amended by Laws of Utah 2013, Chapter 221
73-22-3, as enacted by Laws of Utah 1981, Chapter 188
75-3-603, as enacted by Laws of Utah 1983, Chapter 226
76-5-109, as last amended by Laws of Utah 2011, Chapter 366
76-6-111, as last amended by Laws of Utah 2010, Chapter 193
76-6-501, as last amended by Laws of Utah 2011, Chapter 324
76-6-506.7, as enacted by Laws of Utah 2003, Chapter 306
76-6-1102, as last amended by Laws of Utah 2013, Chapters 77, 119, and 278
76-6-1303, as enacted by Laws of Utah 2012, Chapter 32
76-7-305, as last amended by Laws of Utah 2014, Chapter 187
76-10-808, as enacted by Laws of Utah 1977, Chapter 92
76-10-1108, as last amended by Laws of Utah 2007, Chapter 180
77-10a-12, as last amended by Laws of Utah 2010, Chapter 96
77-15a-104, as enacted by Laws of Utah 2003, Chapter 11
77-27-21.8, as last amended by Laws of Utah 2012, Chapter 145

77-32-301, as last amended by Laws of Utah 2012, Chapter 180
78A-6-606, as last amended by Laws of Utah 2014, Chapter 314
78A-6-1113, as last amended by Laws of Utah 2011, Chapter 208
78A-7-118, as last amended by Laws of Utah 2012, Chapters 205 and 380
78B-4-202, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-4-514, as last amended by Laws of Utah 2010, Chapter 218
78B-15-612, as last amended by Laws of Utah 2014, Chapter 267

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

Section 1. Section **7-2-6** is amended to read:

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

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

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

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

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

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

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

(iii) the court approves.

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

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

(iii) The notice shall be published:

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

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

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

(b) (i) Within 60 days of taking possession of a depository institution, the commissioner shall send a similar notice to all persons whose identity is reflected in the books or records of the institution as depositors or other creditors, secured or unsecured, parties to litigation involving the institution pending at the date the commissioner takes possession of the institution, and all other potential claimants against the institution whose identity is reasonably ascertainable by the commissioner from examination of the books and records of the institution. No notice is required in connection with accounts or other liabilities of the institution that will be paid in full or be fully assumed by another depository institution or trust company. The notice shall specify a filing date for claims against the institution not less than 60 days after the date of mailing. Claimants whose claims against the institution have been assumed by another depository institution or trust company pursuant to a merger or purchase and assumption agreement with the commissioner, or a federal deposit insurance agency appointed as receiver or liquidator of the institution, shall be notified of the assumption of their claims and the name and address of the assuming party within 60 days after the claim is assumed. Unless a purchase and assumption or merger agreement requires otherwise, the assuming party shall give all required notices. Notice shall be mailed to the address appearing in the books and records of the institution.

(ii) Inadvertent or unintentional failure to mail a notice to any person entitled to written notice under this paragraph does not impose any liability on the commissioner or any receiver or liquidator appointed by him beyond the amount the claimant would be entitled to receive if the claim had been timely filed and allowed. The commissioner or any receiver or liquidator appointed by him are not liable for failure to mail notice unless the claimant establishes that it had no knowledge of the commissioner taking possession of the institution until after all opportunity had passed for obtaining payment through filing a claim with the commissioner, receiver, or liquidator.

(c) Upon good cause shown, the court having supervisory jurisdiction may extend the time in which the commissioner may serve any notice required by this chapter.

(d) The commissioner has the sole power to adjudicate any claim against the institution, its property or other assets, tangible or intangible, and to settle or compromise claims within the priorities set forth in Section 7-2-15. Any action of the commissioner is subject to judicial review as provided in Subsection (9).

(e) A receiver or liquidator of the institution appointed by the commissioner has all the duties, powers, authority, and responsibilities of the commissioner under this section. All claims against the institution shall be filed with the receiver or liquidator within the applicable time specified in this section and the receiver or liquidator shall adjudicate the claims as provided in Subsection (2)(d).

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

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

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

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

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

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

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

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

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

(d) (i) An unliquidated claim against the institution, including claims based on alleged torts for which the institution would have been liable on the date the commissioner took possession of the institution and any claims for a right to an equitable remedy for breach of performance by the institution, may be filed in an estimated amount. The commissioner may disallow or allow the claim in an amount determined by the commissioner, settle the claim in an amount approved by the court, or, in his discretion, refer the claim to the court designated by Section 7-2-2 for determination in accordance with procedures designated by the court. If the institution held on the date of possession by the commissioner a policy of insurance that would apply to the liability asserted by the claimant, the commissioner, or any receiver appointed by him may assign to the claimant all rights of the institution under the insurance policy in full satisfaction of the claim.

(ii) If the commissioner finds there are or may be issues of fact or law as to the validity of a claim, liquidated or unliquidated, or its proper allowance or disallowance under the provisions of this chapter, he may appoint a hearing examiner to conduct a hearing and to prepare and submit recommended findings of fact and conclusions of law for final consideration by the commissioner. The hearing shall be conducted as provided in rules or regulations issued by the commissioner. The decision of the commissioner shall be based on the record before the hearing examiner and information the commissioner considers relevant and shall be subject to judicial review as provided in Subsection (9).

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

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

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

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

(i) In establishing alternative dispute resolution processes, the commissioner shall strive for procedures that are expeditious, fair, independent, and low cost. The commissioner shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

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

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

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

(b) proof of the claim was filed prior to the last distribution of assets. For the purpose of this subsection only, late filed claims may be allowed if proof was filed before the final distribution of assets of the institution to claimants of the same priority and are payable only out of the remaining assets of the institution.

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

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

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

chapter may be disallowed.

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

[~~(a)~~] (i) is in writing;

[~~(b)~~] (ii) is otherwise a valid and enforceable contract; and

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

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

(9) (a) Objection to any claim allowed or disallowed may be made by any depositor or other claimant by filing a written objection with the commissioner within 30 days after service of the notice of allowance or disallowance. The commissioner shall present the objection to the court for hearing and determination upon written notice to the claimant and to the filing party. The notice shall set forth the time and place of hearing. After the 30-day period, no objection may be filed. This Subsection (9) does not apply to secured claims allowed under Subsection (3).

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

(c) The court may not reverse or otherwise modify the determination of the commissioner with respect to the claim unless it finds the determination of the commissioner to be arbitrary, capricious, or otherwise contrary to law. The burden of proof is on the party objecting to the determination of the commissioner.

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

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

(2). Such a claim shall be allowed or disallowed within 90 days of the receipt of the complete record of the proceedings. No application to lift the stay of a pending proceeding shall be filed until the claim has been allowed or disallowed. The commissioner may petition the court designated by Section 7-2-2 to lift the stay to determine whether the claim should be allowed or disallowed.

(11) All claims allowed by the commissioner and not disallowed or otherwise modified by the court under Subsection (9), if not paid within 30 days after allowance, shall be evidenced by a certificate payable only out of the assets of the institution in the possession of the commissioner, subject to the priorities set forth in Section 7-2-15. This provision does not apply to a secured claim allowed by the commissioner under Subsection (3)(a).

Section 2. Section **7-17-9** is amended to read:

7-17-9. Actions on accounts established prior to 1979 -- Limitations on recovery.

(1) With respect to any reserve account established prior to July 1, 1979 and for which no legal action is pending as of January 1, 1979, no recovery shall be had in any action brought to require payment of interest on, or other compensation for, the use prior to July 1, 1979, of the funds in such account unless:

(a) An agreement in writing expressly so providing was executed by the borrower and the lender; or

(b) The borrower, or his successors or assigns, establishes by clear and convincing evidence an agreement between the parties that the lender would pay interest on or to otherwise compensate the borrower for the use of the funds in such account. Use in the loan documents of such words as "trust" or "pledge" alone does not establish the intent of the parties; and

(c) There is no federal law or regulation prohibiting the payment of interest on or otherwise compensating the borrower for the use of the funds in such an account.

(2) No action seeking payment of interest on or other compensation for the use of the funds in any reserve account for any period prior to July 1, 1979, shall be brought after June 30, 1981. Any recovery in any such action shall be limited to the four-year period immediately preceding the commencement of the action. No recovery shall be had in respect of any reserve account established prior to July 1, 1979 greater than if the provisions of Section 7-17-3 of this act were applicable to such accounts.

(3) With respect to any reserve account established prior to July 1, 1979, an agreement

in writing between the lender and the borrower, or his successors or assigns, that:

(a) the provisions of Section 7-17-3 of this act shall apply to all payments made subsequent to July 1, 1979[,]; or

(b) the borrower may exercise, for the period subsequent to July 1, 1979, either of the options provided in Section 7-17-4 of this act, shall bar any recovery by the borrower, his successors or assigns, for interest on or other compensation for the use of the funds in such account for any period prior to July 1, 1979.

Section 3. Section **10-3-717** is amended to read:

10-3-717. Purpose of resolutions.

Unless otherwise required by law, the governing body may:

(1) exercise all administrative powers by resolution including:

[~~(1)~~] (a) establishing water and sewer rates;

[~~(2)~~] (b) establishing charges for garbage collection and fees charged for municipal services;

[~~(3)~~] (c) establishing personnel policies and guidelines; and

[~~(4)~~] (d) regulating the use and operation of municipal property[~~. Punishment, fines or forfeitures may not be imposed by resolution.~~]; and

(2) not impose a punishment, fine, or forfeiture by resolution.

Section 4. Section **11-14-103** is amended to read:

11-14-103. Bond issues authorized -- Purposes -- Use of bond proceeds.

(1) Any local political subdivision may, in the manner and subject to the limitations and restrictions contained in this chapter, issue its negotiable bonds for the purpose of paying all or part of the cost of:

(a) acquiring, improving, or extending any one or more improvements, facilities, or property that the local political subdivision is authorized by law to acquire, improve, or extend;

(b) acquiring, or acquiring an interest in, any one or more or any combination of the following types of improvements, facilities, or property to be owned by the local political subdivision, either alone or jointly with one or more other local political subdivisions, or for the improvement or extension of any of those wholly or jointly owned improvements, facilities, or properties:

(i) public buildings of every nature, including without limitation, offices, courthouses,

jails, fire, police and sheriff's stations, detention homes, and any other buildings to accommodate or house lawful activities of a local political subdivision;

(ii) waterworks, irrigation systems, water systems, dams, reservoirs, water treatment plants, and any other improvements, facilities, or property used in connection with the acquisition, storage, transportation, and supplying of water for domestic, industrial, irrigation, recreational, and other purposes and preventing pollution of water;

(iii) sewer systems, sewage treatment plants, incinerators, and other improvements, facilities, or property used in connection with the collection, treatment, and disposal of sewage, garbage, or other refuse;

(iv) drainage and flood control systems, storm sewers, and any other improvements, facilities, or property used in connection with the collection, transportation, or disposal of water;

(v) recreational facilities of every kind, including without limitation, athletic and play facilities, playgrounds, athletic fields, gymnasiums, public baths, swimming pools, camps, parks, picnic grounds, fairgrounds, golf courses, zoos, boating facilities, tennis courts, auditoriums, stadiums, arenas, and theaters;

(vi) convention centers, sports arenas, auditoriums, theaters, and other facilities for the holding of public assemblies, conventions, and other meetings;

(vii) roads, bridges, viaducts, tunnels, sidewalks, curbs, gutters, and parking buildings, lots, and facilities;

(viii) airports, landing fields, landing strips, and air navigation facilities;

(ix) educational facilities, including without limitation, schools, gymnasiums, auditoriums, theaters, museums, art galleries, libraries, stadiums, arenas, and fairgrounds;

(x) hospitals, convalescent homes, and homes for the aged or indigent; and

(xi) electric light works, electric generating systems, and any other improvements, facilities, or property used in connection with the generation and acquisition of electricity for these local political subdivisions and transmission facilities and substations if they do not duplicate transmission facilities and substations of other entities operating in the state prepared to provide the proposed service unless these transmission facilities and substations proposed to be constructed will be more economical to these local political subdivisions; or

(c) new construction, renovation, or improvement to a state highway within the

boundaries of the local political subdivision or an environmental study for a state highway within the boundaries of the local political subdivision.

(2) Except as provided in Subsection (1)(c), any improvement, facility, or property under Subsection (1) need not lie within the limits of the local political subdivision.

(3) A cost under Subsection (1) may include:

(a) the cost of equipment and furnishings for such improvements, facilities, or property;

(b) all costs incident to the authorization and issuance of bonds, including engineering, legal, and fiscal advisers' fees;

(c) costs incident to the issuance of bond anticipation notes, including interest to accrue on bond anticipation notes;

(d) interest estimated to accrue on the bonds during the period to be covered by the construction of the improvement, facility, or property and for 12 months after that period; and

(e) other amounts which the governing body finds necessary to establish bond reserve funds and to provide working capital related to the improvement, facility, or property.

(4) The proceeds from bonds issued on or after May 14, 2013 may not be used:

(a) for operation and maintenance expenses for more [~~for~~] than one year after the date any of the proceeds are first used for those expenses; or

(b) for capitalization of interest more than five years after the bonds are issued.

Section 5. Section **11-27-9** is amended to read:

11-27-9. Prerequisites to issuance of state general obligation refunding bonds.

No general obligation refunding bonds of the state may be issued under this chapter, unless:

[~~(a)~~] (1) the tax provided in Section 11-27-3.5 is sufficient to pay annual interest and to pay the principal of the refunding bonds within 20 years from the final passage of the law authorizing the bonds to be refunded thereby[~~,~~]; or

[~~(b)~~] (2) the legislature has approved the issuance of general obligation refunding bonds and provided for levying a tax annually, sufficient to pay the annual interest and to pay the principal of the general obligation refunding bonds within 20 years from the final passage of the law approving the refunding bonds as provided in Article XIII, Sec. 2(11), Utah Constitution.

Section 6. Section **13-35-103** is amended to read:

13-35-103. Utah Powersport Vehicle Franchise Advisory Board -- Creation -- Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.

(1) There is created within the department the Utah Powersport Vehicle Franchise Advisory Board that consists of:

(a) the executive director or the executive director's designee; and

(b) six members appointed by the executive director, with the concurrence of the governor, as follows:

(i) three new powersport vehicle franchisees, [~~one from~~] each [~~of the three~~] from a different congressional [~~districts~~] district in the state; and

(ii) (A) three members representing powersport vehicle franchisors registered by the department pursuant to Section 13-35-105;

(B) three members of the general public, none of whom shall be related to any franchisee; or

(C) three members consisting of any combination of these representatives under this Subsection (1)(b)(ii).

(2) (a) The executive director shall also appoint, with the concurrence of the governor, three alternate members, with at least one alternate from each of the designations set forth in Subsections (1)(b)(i) and (1)(b)(ii), except that the new powersport vehicle franchisee alternate or alternates for the designation under Subsection (1)(b)(i) may be from any congressional district.

(b) An alternate shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.

(3) (a) (i) Members of the advisory board appointed under Subsections (1)(b) and (2) shall be appointed for a term of four years.

(ii) No specific term shall apply to the executive director or the executive director's designee.

(b) The executive director may adjust the term of members who were appointed to the advisory board prior to July 1, 2002, by extending the unexpired term of a member for up to two additional years in order to insure that approximately half of the members are appointed

every two years.

(c) In the event of a vacancy on the advisory board of a member appointed under Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.

(d) A member may not be appointed to more than two consecutive terms.

(4) (a) The executive director or the executive director's designee shall be the chair of the advisory board.

(b) The department shall keep a record of all hearings, proceedings, transactions, communications, and recommendations of the advisory board.

(5) (a) Four or more members of the advisory board constitute a quorum for the transaction of business.

(b) The action of a majority of a quorum present is considered the action of the advisory board.

(6) (a) A member of the advisory board may not participate as a board member in a proceeding or hearing:

(i) involving the member's business or employer; or

(ii) when a member, a member's business, family, or employer has a pecuniary interest in the outcome or other conflict of interest concerning an issue before the advisory board.

(b) If a member of the advisory board is disqualified under Subsection (6)(a), the executive director shall select the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (2).

(7) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while holding any other elective or appointive state or federal office.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

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

(9) The department shall provide necessary staff support to the advisory board.

Section 7. Section **15-7-4** is amended to read:

15-7-4. Registration system established by issuer.

(1) (a) Each issuer is authorized to establish and maintain a system of registration with respect to each obligation it issues.

(b) The system described in this Subsection (1) may either be:

[~~(a)~~] (i) a system pursuant to which only certificated registered public obligations are issued[~~, or (b)~~];

(ii) a system pursuant to which only uncertificated registered public obligations are issued[~~,~~]; or

[~~(c)~~] (iii) a system pursuant to which both certificated and uncertificated registered public obligations are issued.

(c) The issuer may amend, discontinue, and reinstitute [~~any~~] a system established under this section, from time to time, subject to covenants.

(2) The system shall be established, amended, discontinued, or reinstituted, for the issuer by, and shall be maintained for the issuer as provided by, the official or official body.

(3) The system shall be described in the registered public obligation or in the official actions which provide for original issuance of the registered public obligation, and in subsequent official actions providing for amendments and other matters from time to time. The description may be by reference to a program of the issuer which is established by the official or official body.

(4) The system shall define the method or methods by which transfer of the registered public obligation is effective with respect to the issuer, and by which payment of principal and any interest shall be made. The system may permit the issuance of registered public obligations in any denomination to represent several registered public obligations of smaller denominations. The system may also provide for the form of any certificated registered public obligation or of any writing relating to an uncertificated registered public obligation, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to holders or owners of obligations, and for accounting, cancelled certificate destruction, registration and release of security interests and other incidental matters. Unless the issuer otherwise provides, the record date for interest payable on the first or fifteenth days of a month

shall be the fifteenth day or the last business day of the preceding month, respectively, and for interest payable on other than the first or fifteenth days of a month, shall be the fifteenth calendar day before the interest payment date.

(5) Under a system pursuant to which both certificated and uncertificated registered public obligations are issued, both types of registered public obligations may be regularly issued, or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners and provision may be made for registration and release of security interests in registered public obligations.

(6) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions of the system and the effect of such on the exemption of interest from the income tax provided for by the Code.

(7) Whenever an issuer issues an uncertificated registered public obligation, the system of registration may provide that, as long as the uncertified registered obligation remains outstanding and unpaid, a true copy of the official actions of the issuer relating to the uncertificated registered public obligation will be maintained by the issuer or by the person, if any, maintaining the system on behalf of the issuer. A copy of such official actions verified by an authorized officer is admissible before any court of record, administrative body, or arbitration panel without further authentication.

(8) Nothing in this act precludes conversion from one form of registered public obligation provided by this act to a form of obligation not provided by this act if interest on the converted obligation continues to be exempt from income taxation under the Code.

(9) Rights provided by other laws with respect to obligations in forms not provided by this act shall, to the extent not inconsistent with this act, apply with respect to registered public obligations issued in forms authorized by this act.

Section 8. Section **15A-2-103** is amended to read:

15A-2-103. Specific editions adopted of construction code of a nationally recognized code authority.

(1) Subject to the other provisions of this part, the following construction codes are incorporated by reference, and together with the amendments specified in Chapter 3, Part 3, Statewide Amendments to International Plumbing Code, and Chapter 4, Local Amendments Incorporated as Part of State Construction Code, are the construction standards to be applied to

building construction, alteration, remodeling, and repair, and in the regulation of building construction, alteration, remodeling, and repair in the state:

(a) the 2012 edition of the International Building Code, including Appendix J, issued by the International Code Council;

(b) the 2012 edition of the International Residential Code, issued by the International Code Council;

(c) the 2012 edition of the International Plumbing Code, issued by the International Code Council;

(d) the 2012 edition of the International Mechanical Code, issued by the International Code Council;

(e) the 2012 edition of the International Fuel Gas Code, issued by the International Code Council;

(f) the 2011 edition of the National Electrical Code, issued by the National Fire Protection Association;

(g) the 2012 edition of the International Energy Conservation Code, issued by the International Code Council;

(h) subject to Subsection 15A-2-104(2), the HUD Code;

(i) subject to Subsection 15A-2-104(1), Appendix E of the 2012 edition of the International Residential Code, issued by the International Code Council; and

(j) subject to Subsection 15A-2-104(1), the 2005 edition of the NFPA 225 Model Manufactured Home Installation Standard, issued by the National Fire Protection Association.

(2) Consistent with Title 65A, Chapter 8, Management of Forest Lands and Fire Control, the Legislature adopts the 2006 edition of the Utah Wildland Urban Interface Code, issued by the International Code Council, with the alternatives or amendments approved by the Utah Division of Forestry, as a construction code that may be adopted by a local compliance agency by local ordinance or other similar action as a local amendment to the codes listed in this section.

Section 9. Section **16-6a-1701** is amended to read:

16-6a-1701. Application to existing domestic nonprofit corporations -- Reports of domestic and foreign nonprofit corporation.

(1) Except as otherwise provided in Section 16-6a-1704, this chapter applies to

domestic nonprofit corporations as follows:

(a) domestic nonprofit corporations in existence on April 30, 2001, that were incorporated under any general statute of this state providing for incorporation of nonprofit corporations, including all nonprofit corporations organized under any former provisions of [~~this chapter~~] Title 16, Chapter 6;

(b) mutual irrigation, canal, ditch, reservoir, and water companies and water users' associations organized and existing under the laws of this state on April 30, 2001;

(c) corporations organized under the provisions of Title 16, Chapter 7, Corporations Sole, for purposes of applying all provisions relating to merger or consolidation; and

(d) to actions taken by the directors, officers, and members of the entities described in Subsections (1)(a), (b), and (c) after April 30, 2001.

(2) Domestic nonprofit corporations to which this chapter applies, that are organized and existing under the laws of this state on April 30, 2001:

(a) shall continue in existence with all the rights and privileges applicable to nonprofit corporations organized under this chapter; and

(b) from April 30, 2001 shall have all the rights and privileges and shall be subject to all the remedies, restrictions, liabilities, and duties prescribed in this chapter except as otherwise specifically provided in this chapter.

(3) Every existing domestic nonprofit corporation and foreign nonprofit corporation qualified to conduct affairs in this state on April 30, 2001 shall file an annual report with the division setting forth the information prescribed by Section 16-6a-1607. The annual report shall be filed at such time as would have been required had this chapter not taken effect and shall be filed annually thereafter as required in Section 16-6a-1607.

Section 10. Section **17-53-301** is amended to read:

17-53-301. General powers, duties, and functions of county executive.

(1) The elected county executive is the chief executive officer of the county.

(2) [~~Except~~] Each county executive shall exercise all executive powers, have all executive duties, and perform all executive functions of the county, including those enumerated in this part, except as expressly provided otherwise in statute and except as contrary to the powers, duties, and functions of other county officers expressly provided for in:

(a) Chapter 16, County Officers;

(b) Chapter 17, County Assessor;

(c) Chapter 18a, Powers and Duties of County and District Attorney; [~~Chapter 19, County Auditor;~~]

(d) Chapter 19a, County Auditor;

(e) Chapter 20, County Clerk;

(f) Chapter 21, Recorder;

(g) Chapter 22, Sheriff;

(h) Chapter 23, County Surveyor; and

(i) Chapter 24, County Treasurer[~~, each county executive shall exercise all executive powers, have all executive duties, and perform all executive functions of the county, including those enumerated in this part~~].

(3) A county executive may take any action required by law and necessary to the full discharge of the executive's duties, even though the action is not expressly authorized in statute.

Section 11. Section **17B-2a-404** is amended to read:

17B-2a-404. Improvement district board of trustees.

(1) As used in this section:

(a) "County district" means an improvement district that does not include within its boundaries any territory of a municipality.

(b) "County member" means a member of a board of trustees of a county district.

(c) "Electric district" means an improvement district that was created for the purpose of providing electric service.

(d) "Included municipality" means a municipality whose boundaries are entirely contained within but do not coincide with the boundaries of an improvement district.

(e) "Municipal district" means an improvement district whose boundaries coincide with the boundaries of a single municipality.

(f) "Regular district" means an improvement district that is not a county district, electric district, or municipal district.

(g) "Remaining area" means the area of a regular district that:

(i) is outside the boundaries of an included municipality; and

(ii) includes the area of an included municipality whose legislative body elects, under

Subsection [~~(4)~~] (5)(a)(ii), not to appoint a member to the board of trustees of the regular district.

(h) "Remaining area member" means a member of a board of trustees of a regular district who is appointed, or, if applicable, elected to represent the remaining area of the district.

(2) The legislative body of the municipality included within a municipal district may:

(a) elect, at the time of the creation of the district, to be the board of trustees of the district; and

(b) adopt at any time a resolution providing for:

(i) the election of board of trustees members, as provided in Section 17B-1-306; or

(ii) the appointment of board of trustees members, as provided in Section 17B-1-304.

(3) (a) The legislative body of a county whose unincorporated area is partly or completely within a county district may:

(i) elect, at the time of the creation of the district, to be the board of trustees of the district, even though a member of the legislative body of the county may not meet the requirements of Subsection 17B-1-302(1)(a);

(ii) adopt at any time a resolution providing for:

(A) the election of board of trustees members, as provided in Section 17B-1-306; or

(B) except as provided in Subsection (4), the appointment of board of trustees members, as provided in Section 17B-1-304; and

(iii) if the conditions of Subsection (3)(b) are met, appoint a member of the legislative body of the county to the board of trustees, except that the legislative body of the county may not appoint more than three members of the legislative body of the county to the board of trustees.

(b) A legislative body of a county whose unincorporated area is partly or completely within a county district may take an action under Subsection (3)(a)(iii) if:

(i) more than 35% of the residences within a county district that receive service from the district are seasonally occupied homes, as defined in Subsection 17B-1-302(1)(b)(i)(B);

(ii) the board of trustees are appointed by the legislative body of the county; and

(iii) there are at least two appointed board members who meet the requirements of Subsection 17B-1-302(1), except that a member of the legislative body of the county need not

satisfy the requirements of Subsection 17B-1-302(1).

(4) Subject to Subsection (6)(d), the legislative body of a county may not adopt a resolution providing for the appointment of board of trustees members as provided in Subsection (3)(a)(ii)(B) at any time after the county district is governed by an elected board of trustees unless:

(a) the elected board has ceased to function;

(b) the terms of all of the elected board members have expired without the board having called an election; or

(c) the elected board of trustees unanimously adopts a resolution approving the change from an elected to an appointed board.

(5) (a) (i) Except as provided in Subsection (5)(a)(ii), the legislative body of each included municipality shall each appoint one member to the board of trustees of a regular district.

(ii) The legislative body of an included municipality may elect not to appoint a member to the board under Subsection (5)(a)(i).

(b) Except as provided in Subsection (6), the legislative body of each county whose boundaries include a remaining area shall appoint all other members to the board of trustees of a regular district.

(6) Notwithstanding Subsection (3), each remaining area member of a regular district and each county member of a county district shall be elected, as provided in Section 17B-1-306, if:

(a) the petition or resolution initiating the creation of the district provides for remaining area or county members to be elected;

(b) the district holds an election to approve the district's issuance of bonds;

(c) for a regular district, an included municipality elects, under Subsection (5)(a)(ii), not to appoint a member to the board of trustees; or

(d) (i) at least 90 days before the municipal general election or regular general election, as applicable, a petition is filed with the district's board of trustees requesting remaining area members or county members, as the case may be, to be elected; and

(ii) the petition is signed by registered voters within the remaining area or county district, as the case may be, equal in number to at least 10% of the number of registered voters

within the remaining area or county district, respectively, who voted in the last gubernatorial election.

(7) Subject to Section 17B-1-302, the number of members of a board of trustees of a regular district shall be:

(a) the number of included municipalities within the district, if:

(i) the number is an odd number; and

(ii) the district does not include a remaining area;

(b) the number of included municipalities plus one, if the number of included municipalities within the district is even; and

(c) the number of included municipalities plus two, if:

(i) the number of included municipalities is odd; and

(ii) the district includes a remaining area.

(8) (a) Except as provided in Subsection (8)(b), each remaining area member of the board of trustees of a regular district shall reside within the remaining area.

(b) Notwithstanding Subsection (8)(a) and subject to Subsection (8)(c), each remaining area member shall be chosen from the district at large if:

(i) the population of the remaining area is less than 5% of the total district population; or

(ii) (A) the population of the remaining area is less than 50% of the total district population; and

(B) the majority of the members of the board of trustees are remaining area members.

(c) Application of Subsection (8)(b) may not prematurely shorten the term of any remaining area member serving the remaining area member's elected or appointed term on May 11, 2010.

(9) If the election of remaining area or county members of the board of trustees is required because of a bond election, as provided in Subsection [~~(9)~~] (6)(b):

(a) a person may file a declaration of candidacy if:

(i) the person resides within:

(A) the remaining area, for a regular district; or

(B) the county district, for a county district; and

(ii) otherwise qualifies as a candidate;

(b) the board of trustees shall, if required, provide a ballot separate from the bond election ballot, containing the names of candidates and blanks in which a voter may write additional names; and

(c) the election shall otherwise be governed by Title 20A, Election Code.

(10) (a) (i) This Subsection (10) applies to the board of trustees members of an electric district.

(ii) Subsections (2) through (9) do not apply to an electric district.

(b) The legislative body of the county in which an electric district is located may appoint the initial board of trustees of the electric district as provided in Section 17B-1-304.

(c) After the initial board of trustees is appointed as provided in Subsection (10)(b), each member of the board of trustees of an electric district shall be elected by persons using electricity from and within the district.

(d) Each member of the board of trustees of an electric district shall be a user of electricity from the district and, if applicable, the division of the district from which elected.

(e) The board of trustees of an electric district may be elected from geographic divisions within the district.

(f) A municipality within an electric district is not entitled to automatic representation on the board of trustees.

Section 12. Section **17B-2a-405** is amended to read:

17B-2a-405. Board of trustees of certain sewer improvement districts.

(1) As used in this section:

(a) "Jurisdictional boundaries" means:

(i) for a qualified county, the boundaries that include:

(A) the area of the unincorporated part of the county that is included within a sewer improvement district; and

(B) the area of each nonappointing municipality that is included within the sewer improvement district; and

(ii) for a qualified municipality, the boundaries that include the area of the municipality that is included within a sewer improvement district.

(b) "Nonappointing municipality" means a municipality that:

(i) is partly included within a sewer improvement district; and

(ii) is not a qualified municipality.

(c) "Qualified county" means a county:

(i) some or all of whose unincorporated area is included within a sewer improvement district; or

(ii) which includes within its boundaries a nonappointing municipality.

(d) "Qualified county member" means a member of a board of trustees of a sewer improvement district appointed under Subsection (3)(a)(ii).

(e) "Qualified municipality" means a municipality that is partly or entirely included within a sewer improvement district that includes:

(i) all of the municipality that is capable of receiving sewage treatment service from the sewer improvement district; and

(ii) more than half of:

(A) the municipality's land area; or

(B) the assessed value of all private real property within the municipality.

(f) "Qualified municipality member" means a member of a board of trustees of a sewer improvement district appointed under Subsection (3)(a)(i).

(g) "Sewer improvement district" means an improvement district that:

(i) provides sewage collection, treatment, and disposal service; and

(ii) made an election before 1954 under Laws of Utah 1953, Chapter 29, to enable it to continue to appoint its board of trustees members as provided in this section.

(2) (a) Notwithstanding Section 17B-2a-404, the board of trustees members of a sewer improvement district shall be appointed as provided in this section.

(b) The board of trustees of a sewer improvement district may revoke the election under Subsection (1)(d)[~~(ii)~~] and become subject to the provisions of Section 17B-2a-404 only by the unanimous vote of all members of the sewer improvement district's board of trustees at a time when there is no vacancy on the board.

(3) (a) The board of trustees of each sewer improvement district shall consist of:

(i) at least one person but not more than three persons appointed by the mayor of each qualified municipality, with the consent of the legislative body of that municipality; and

(ii) at least one person but not more than three persons appointed by:

(A) the county executive, with the consent of the county legislative body, for a

qualified county operating under a county executive-council form of county government; or

(B) the county legislative body, for each other qualified county.

(b) Each qualified county member appointed under Subsection (3)(a)(ii) shall represent the area within the jurisdictional boundaries of the qualified county.

(4) Notwithstanding Subsection 17B-1-302(2), the number of board of trustees members of a sewer improvement district shall be the number that results from application of Subsection (3)(a).

(5) Except as provided in this section, an appointment to the board of trustees of a sewer improvement district is governed by Section 17B-1-304.

(6) A quorum of a board of trustees of a sewer improvement district consists of members representing more than 50% of the total number of qualified county and qualified municipality votes under Subsection (7).

(7) (a) Subject to Subsection (7)(b), each qualified county and each qualified municipality is entitled to one vote on the board of trustees of a sewer improvement district for each $10,000,000, or fractional part larger than 1/2 of that amount, of assessed valuation of private real property taxable for district purposes within the respective jurisdictional boundaries, as shown by the assessment records of the county and evidenced by a certificate of the county auditor.

(b) Notwithstanding Subsection (7)(a), each qualified county and each qualified municipality shall have at least one vote.

(8) If a qualified county or qualified municipality appoints more than one board member, all the votes to which the qualified county or qualified municipality is entitled under Subsection (7) for an item of board business shall collectively be cast by a majority of the qualified county members or qualified municipal members, respectively, present at a meeting of the board of trustees.

Section 13. Section **17B-2a-1007** is amended to read:

17B-2a-1007. Contract assessments.

(1) As used in this section:

(a) "Assessed land" means:

(i) for a contract assessment under a water contract with a private water user, the land owned by the private water user that receives the beneficial use of water under the water

contract; or

(ii) for a contract assessment under a water contract with a public water user, the land within the boundaries of the public water user that is within the boundaries of the water conservancy district and that receives the beneficial use of water under the water contract.

(b) "Contract assessment" means an assessment levied as provided in this section by a water conservancy district on assessed land.

(c) "Governing body" means:

(i) for a county, city, or town, the legislative body of the county, city, or town;

(ii) for a local district, the board of trustees of the local district;

(iii) for a special service district:

(A) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or

(B) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301; and

(iv) for any other political subdivision of the state, the person or body with authority to govern the affairs of the political subdivision.

(d) "Petitioner" means a private petitioner or a public petitioner.

(e) "Private petitioner" means an owner of land within a water conservancy district who submits a petition to a water conservancy district under Subsection (3) to enter into a water contract with the district.

(f) "Private water user" means an owner of land within a water conservancy district who enters into a water contract with the district.

(g) "Public petitioner" means a political subdivision of the state:

(i) whose territory is partly or entirely within the boundaries of a water conservancy district; and

(ii) that submits a petition to a water conservancy district under Subsection (3) to enter into a water contract with the district.

(h) "Public water user" means a political subdivision of the state:

(i) whose territory is partly or entirely within the boundaries of a water conservancy district; and

(ii) that enters into a water contract with the district.

(i) "Water contract" means a contract between a water conservancy district and a private water user or a public water user under which the water user purchases, leases, or otherwise acquires the beneficial use of water from the water conservancy district for the benefit of:

(i) land owned by the private water user; or

(ii) land within the public water user's boundaries that is also within the boundaries of the water conservancy district.

(j) "Water user" means a private water user or a public water user.

(2) A water conservancy district may levy a contract assessment as provided in this section.

(3) (a) The governing body of a public petitioner may authorize its chief executive officer to submit a written petition on behalf of the public petitioner to a water conservancy district requesting to enter into a water contract.

(b) A private petitioner may submit a written petition to a water conservancy district requesting to enter into a water contract.

(c) Each petition under this Subsection (3) shall include:

(i) the petitioner's name;

(ii) the quantity of water the petitioner desires to purchase or otherwise acquire;

(iii) a description of the land upon which the water will be used;

(iv) the price to be paid for the water;

(v) the amount of any service, turnout, connection, distribution system, or other charge to be paid;

(vi) whether payment will be made in cash or annual installments;

(vii) a provision requiring the contract assessment to become a lien on the land for which the water is petitioned and is to be allotted; and

(viii) an agreement that the petitioner is bound by the provisions of this part and the rules and regulations of the water conservancy district board of trustees.

(4) (a) If the board of a water conservancy district desires to consider a petition submitted by a petitioner under Subsection (3), the board shall:

(i) publish notice of the petition and of the hearing required under Subsection (4)(a)(ii) at least once a week in two successive weeks in a newspaper of general circulation within the

county in which the political subdivision or private petitioner's land, as the case may be, is located; and

(ii) hold a public hearing on the petition.

(b) Each notice under Subsection (4)(a)(i) shall:

(i) state that a petition has been filed and that the district is considering levying a contract assessment; and

(ii) give the date, time, and place of the hearing required under Subsection (4)(a)(ii).

(c) (i) At each hearing required under Subsection (4)(a)(ii), the board of trustees of the water conservancy district shall:

(A) allow any interested person to appear and explain why the petition should not be granted; and

(B) consider each written objection to the granting of the petition that the board receives before or at the hearing.

(ii) The board of trustees may adjourn and reconvene the hearing as the board considers appropriate.

(d) (i) Any interested person may file with the board of the water conservancy district, at or before the hearing under Subsection (4)(a)(ii), a written objection to the district's granting a petition.

(ii) Each person who fails to submit a written objection within the time provided under Subsection (4)(d)(i) is considered to have consented to the district's granting the petition and levying a contract assessment.

(5) After holding a public hearing as required under Subsection (4)(a)(ii), the board of trustees of a water conservancy district may:

(a) deny the petition; or

(b) grant the petition, if the board considers granting the petition to be in the best interests of the district.

(6) The board of a water conservancy district that grants a petition under this section may:

(a) make an allotment of water for the benefit of assessed land;

(b) authorize any necessary construction to provide for the use of water upon the terms and conditions stated in the water contract;

(c) divide the district into units and fix a different rate for water purchased or otherwise acquired and for other charges within each unit, if the rates and charges are equitable, although not equal and uniform, for similar classes of services throughout the district; and

(d) levy a contract assessment on assessed land.

(7) (a) The board of trustees of each water conservancy district that levies a contract assessment under this section shall:

(i) cause a certified copy of the resolution, ordinance, or order levying the assessment to be recorded in the office of the recorder of each county in which assessed land is located; and

(ii) on or before July 1 of each year after levying the contract assessment, certify to the auditor of each county in which assessed land is located the amount of the contract assessment.

(b) Upon the recording of the resolution or ordinance under Subsection (7)(a)(i), the contract assessment associated with allotting water to the assessed land under the water contract becomes a perpetual lien on the assessed land.

(c) Each county in which assessed land is located shall collect the contract assessment in the same manner as taxes levied by the county.

(8) (a) The board of trustees of each water conservancy district that levies a contract assessment under this section shall:

(i) hold a public hearing, before August 8 of each year in which a contract assessment is levied, to hear and consider objections filed under Subsection (8)(b); and

(ii) twice publish a notice, at least a week apart:

(A) (I) in a newspaper of general circulation in each county with assessed land included within the district boundaries; or

(II) if there is no newspaper of general circulation within the county, in a newspaper of general circulation in an adjoining county;

(B) that contains:

(I) a general description of the assessed land;

(II) the amount of the contract assessment; and

(III) the time and place of the public hearing under Subsection (8)(a)(i).

(b) An owner of assessed land within the water conservancy district who believes that the contract assessment on the owner's land is excessive, erroneous, or illegal may, before the

hearing under Subsection (8)(a)(i), file with the board of trustees a verified, written objection to the assessment, stating the grounds for the objection.

(c) (i) At each hearing under Subsection (8)(a)(i), the board of trustees shall hear and consider the evidence and arguments supporting each objection.

(ii) After hearing and considering the evidence and arguments supporting an objection, the board of trustees:

(A) shall enter a written order, stating its decision; and

(B) may modify the assessment.

(d) (i) An owner of assessed land may file a petition in district court seeking review of a board of trustees' order under Subsection (8)(c)[~~(i)~~](ii)(A).

(ii) Each petition under Subsection (8)(d)(i) shall:

(A) be filed within 30 days after the board enters its written order;

(B) state specifically the part of the board's order for which review is sought; and

(C) be accompanied by a bond with good and sufficient security in an amount not exceeding $200, as determined by the court clerk.

(iii) If more than one owner of assessed land seeks review, the court may, upon a showing that the reviews may be consolidated without injury to anyone's interests, consolidate the reviews and hear them together.

(iv) The court shall act as quickly as possible after a petition is filed.

(v) A court may not disturb a board of trustees' order unless the court finds that the contract assessment on the petitioner's assessed land is manifestly disproportionate to assessments imposed upon other land in the district.

(e) If no petition under Subsection (8)(d) is timely filed, the contract assessment is conclusively considered to have been made in proportion to the benefits conferred on the land in the district.

(9) Each resolution, ordinance, or order under which a water conservancy district levied a Class B, Class C, or Class D assessment before April 30, 2007 under the law in effect at the time of the levy is validated, ratified, and confirmed, and a water conservancy district may continue to levy the assessment according to the terms of the resolution, ordinance, or order.

(10) A contract assessment is not a levy of an ad valorem property tax and is not

subject to the limits stated in Section 17B-2a-1006.

Section 14. Section **20A-1-103** is amended to read:

20A-1-103. Severability clause.

If any provision of [~~2014 General Session S.B. 54~~] Laws of Utah 2014, Chapter 17, or the application of any provision of [~~2014 General Session S.B. 54~~] Laws of Utah 2014, Chapter 17, to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of [~~2014 General Session S.B. 54~~] Laws of Utah 2014, Chapter 17, shall be given effect without the invalid provision or application. The provisions of [~~2014 General Session S.B. 54~~] Laws of Utah 2014, Chapter 17, are severable.

Section 15. Section **20A-7-613** is amended to read:

20A-7-613. Property tax referendum petition.

(1) As used in this section:

(a) "Certified tax rate" is as defined in Subsection 59-2-924(3)(a).

(b) "Fiscal year taxing entity" means a taxing entity that operates under a fiscal year that begins on July 1 and ends on June 30.

(2) Except as provided in this section, the requirements of this part apply to a referendum petition challenging a fiscal year taxing entity's legislative body's vote to impose a tax rate that exceeds the certified tax rate.

(3) Notwithstanding Subsection 20A-7-604(5), the local clerk shall number each of the referendum packets and return them to the sponsors within two working days.

(4) Notwithstanding Subsection 20A-7-606(1), the sponsors shall deliver each signed and verified referendum packet to the county clerk of the county in which the packet was circulated no later than 40 days after the day on which the local clerk complies with Subsection (3).

(5) Notwithstanding Subsections 20A-7-606(2) and (3), the county clerk shall take the actions required in Subsections 20A-7-606(2) and (3) within 10 working days after the day on which the county clerk receives the signed and verified referendum packet as described in Subsection (4).

(6) The local clerk shall take the actions required by Section 20A-7-607 within two working days after the day on which the local clerk receives the referendum packets from the county clerk.

(7) Notwithstanding Subsection 20A-7-608(2), the local attorney shall prepare the ballot title within two working days after the day on which the referendum petition is declared sufficient for submission to a vote of the people.

(8) Notwithstanding Subsection 20A-7-609(2)[~~(d)~~](c), a referendum that qualifies for the ballot under this section shall appear on the ballot for the earlier of the next regular general election or the next municipal general election unless a special election is called.

(9) Notwithstanding the requirements related to absentee ballots under this title:

(a) the election officer shall prepare absentee ballots for those voters who have requested an absentee ballot as soon as possible after the ballot title is prepared as described in Subsection (7); and

(b) the election officer shall mail absentee ballots on a referendum under this section the later of:

(i) the time provided in Section 20A-3-305 or 20A-16-403; or

(ii) the time that absentee ballots are prepared for mailing under this section.

(10) Section 20A-7-402 does not apply to a referendum described in this section.

(11) (a) If a majority of voters does not vote against imposing the tax at a rate calculated to generate the increased revenue budgeted, adopted, and approved by the fiscal year taxing entity's legislative body:

(i) the certified tax rate for the fiscal year during which the referendum petition is filed is its most recent certified tax rate; and

(ii) the proposed increased revenues for purposes of establishing the certified tax rate for the fiscal year after the fiscal year described in Subsection (11)(a)(i) are the proposed increased revenues budgeted, adopted, and approved by the fiscal year taxing entity's legislative body before the filing of the referendum petition.

(b) If a majority of voters votes against imposing a tax at the rate established by the vote of the fiscal year taxing entity's legislative body, the certified tax rate for the fiscal year taxing entity is its most recent certified tax rate.

(c) If the tax rate is set in accordance with Subsection (11)(a)(ii), a fiscal year taxing entity is not required to comply with the notice and public hearing requirements of Section 59-2-919 if the fiscal year taxing entity complies with those notice and public hearing requirements before the referendum petition is filed.

(12) The ballot title shall, at a minimum, include in substantially this form the following: "Shall the [name of the taxing entity] be authorized to levy a tax rate in the amount sufficient to generate an increased property tax revenue of [amount] for fiscal year [year] as budgeted, adopted, and approved by the [name of the taxing entity]".

(13) A fiscal year taxing entity shall pay the county the costs incurred by the county that are directly related to meeting the requirements of this section and that the county would not have incurred but for compliance with this section.

(14) (a) An election officer shall include on a ballot a referendum that has not yet qualified for placement on the ballot, if:

(i) sponsors file an application for a referendum described in this section;

(ii) the ballot will be used for the election for which the sponsors are attempting to qualify the referendum; and

(iii) the deadline for qualifying the referendum for placement on the ballot occurs after the day on which the ballot will be printed.

(b) If an election officer includes on a ballot a referendum described in Subsection (14)(a), the ballot title shall comply with Subsection (12).

(c) If an election officer includes on a ballot a referendum described in Subsection (14)(a) that does not qualify for placement on the ballot, the election officer shall inform the voters by any practicable method that the referendum has not qualified for the ballot and that votes cast in relation to the referendum will not be counted.

Section 16. Section **23-25-2** is amended to read:

23-25-2. Adoption and text of compact.

(1) The participating states find that:

(a) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(b) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, regulations, ordinances, and administrative rules relating to the management of the resources.

(c) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of the natural resources.

(d) Wildlife resources are valuable without regard to political boundaries; therefore,

every person should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(e) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(f) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(g) Usually, a person who is cited for a wildlife violation in a state other than his home state:

(i) is required to post collateral or bond to secure appearance for a trial at a later date; or

(ii) is taken directly into custody until collateral or bond is posted; or

(iii) is taken directly to court for an immediate appearance.

(h) The purpose of the enforcement practices set forth in Subsection (1)(g) [~~of this article~~] is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his way after receiving the citation, could return to his home state and disregard his duty under the terms of the citation.

(i) In most instances, a person receiving a wildlife citation in his home state is permitted to accept the citation from the officer at the scene of the violation and immediately continue on his way after agreeing or being instructed to comply with the terms of the citation.

(j) The practices described in Subsection (1)(g) [~~of this article~~] cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine, and is compelled to remain in custody until some alternative arrangement is made.

(k) The enforcement practices described in Subsection (1)(g) [~~of this article~~] consume an undue amount of enforcement time.

(2) It is the policy of the participating states to:

(a) promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to the management of wildlife resources in their respective states;

(b) recognize the suspension of wildlife license privileges of a person whose license

privileges have been suspended by a participating state and treat the suspension as if it had occurred in their state;

(c) allow a violator, except as provided in Subsection 23-25-4(2), to accept a wildlife citation and, without delay, proceed on his way, whether or not the violator is a resident of the state in which the citation was issued, provided that the violator's home state is a party to this compact;

(d) report to the appropriate participating state, as provided in the compact manual, a conviction recorded against a person whose home state was not the issuing state;

(e) allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they had occurred in the home state;

(f) extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another state;

(g) maximize effective use of law enforcement personnel and information; and

(h) assist court systems in the efficient disposition of wildlife violations.

Section 17. Section **26-18-3.6** is amended to read:

26-18-3.6. Income and resources from institutionalized spouses.

(1) As used in this section:

(a) "Community spouse" means the spouse of an institutionalized spouse.

(b) (i) "Community spouse monthly income allowance" means an amount by which the minimum monthly maintenance needs allowance for the spouse exceeds the amount of monthly income otherwise available to the community spouse, determined without regard to the allowance, except as provided in Subsection (1)(b)(ii).

(ii) If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse may not be less than the amount of the monthly income so ordered.

(c) "Community spouse resource allowance" is an amount by which the greatest of the following exceeds the amount of the resources otherwise available to the community spouse:

(i) $15,804;

(ii) the lesser of the spousal share computed under Subsection (4) or $76,740;

(iii) the amount established in a hearing held under Subsection (11); or

(iv) the amount transferred by court order under Subsection (11)(c).

(d) "Excess shelter allowance" for a community spouse means the amount by which the sum of the spouse's expense for rent or mortgage payment, taxes, and insurance, and in the case of condominium or cooperative, required maintenance charge, for the community spouse's principal residence and the spouse's actual expenses for electricity, natural gas, and water utilities or, at the discretion of the department, the federal standard utility allowance under SNAP as defined in Section 35A-1-102, exceeds 30% of the amount described in Subsection (9).

(e) "Family member" means a minor dependent child, dependent parents, or dependent sibling of the institutionalized spouse or community spouse who are residing with the community spouse.

(f) (i) "Institutionalized spouse" means a person who is residing in a nursing facility and is married to a spouse who is not in a nursing facility.

(ii) An "institutionalized spouse" does not include a person who is not likely to reside in a nursing facility for at least 30 consecutive days.

(g) "Nursing care facility" is defined in Section 26-21-2.

(2) The division shall comply with this section when determining eligibility for medical assistance for an institutionalized spouse.

(3) For services furnished during a calendar year beginning on or after January 1, 1999, the dollar amounts specified in Subsections (1)(c)(i), (1)(c)(ii), and (10)(b) shall be increased by the division by the amount as determined annually by the federal [~~Health Care Financing Administration~~] Centers for Medicare and Medicaid Services.

(4) The division shall compute, as of the beginning of the first continuous period of institutionalization of the institutionalized spouse:

(a) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest; and

(b) a spousal share, which is 1/2 of the resources described in Subsection (4)(a).

(5) At the request of an institutionalized spouse or a community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse and upon the receipt of relevant documentation of resources, the division shall promptly assess

and document the total value described in Subsection (4)(a) and shall provide a copy of that assessment and documentation to each spouse and shall retain a copy of the assessment. When the division provides a copy of the assessment, it shall include a notice stating that the spouse may request a hearing under Subsection (11).

(6) When determining eligibility for medical assistance under this chapter:

(a) Except as provided in Subsection (6)(b), all the resources held by either the institutionalized spouse, community spouse, or both, are considered to be available to the institutionalized spouse.

(b) Resources are considered to be available to the institutionalized spouse only to the extent that the amount of those resources exceeds the amounts specified in Subsections (1)(c)(i) through (iv) at the time of application for medical assistance under this chapter.

(7) The division may not find an institutionalized spouse to be ineligible for medical assistance by reason of resources determined under Subsection (5) to be available for the cost of care when:

(a) the institutionalized spouse has assigned to the state any rights to support from the community spouse;

(b) (i) except as provided in Subsection (7)(b)(ii), the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment;

(ii) Subsection (7)(b)(i) does not prevent the division from seeking a court order seeking an assignment of support; or

(c) the division determines that denial of medical assistance would cause an undue burden.

(8) During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is eligible for medical assistance, the resources of the community spouse may not be considered to be available to the institutionalized spouse.

(9) When an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly for the cost of care in the nursing care facility, the division shall deduct from the spouse's monthly income the following amounts in the following order:

(a) a personal needs allowance, the amount of which is determined by the division;

(b) a community spouse monthly income allowance, but only to the extent that the income of the institutionalized spouse is made available to, or for the benefit of, the community spouse;

(c) a family allowance for each family member, equal to at least 1/3 of the amount that the amount described in Subsection (10)(a)(i) exceeds the amount of monthly income of that family member; and

(d) amounts for incurred expenses for the medical or remedial care for the institutionalized spouse.

(10) (a) Except as provided in Subsection (10)(b), the division shall establish a minimum monthly maintenance needs allowance for each community spouse which is not less than the sum of:

(i) 150% of the current poverty guideline for a two-person family unit that applies to this state as established by the United States Department of Health and Human Services; and

(ii) an excess shelter allowance.

(b) The amount provided in Subsection (10)(a) may not exceed $1,976, unless a court order establishes a higher amount.

(11) (a) An institutionalized spouse or a community spouse may request a hearing with respect to the determinations described in Subsections (11)(e)(i) through (v) if an application for medical assistance has been made on behalf of the institutionalized spouse.

(b) A hearing under this subsection regarding the community spouse resource allowance shall be held by the division within 90 days from the date of the request for the hearing.

(c) If either spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance provided under Subsection (10), an amount adequate to provide additional income as is necessary.

(d) If either spouse establishes that the community spouse resource allowance, in relation to the amount of income generated by the allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance, an amount adequate to provide a

minimum monthly maintenance needs allowance.

(e) A hearing may be held under this subsection if either the institutionalized spouse or community spouse is dissatisfied with a determination of:

(i) the community spouse monthly income allowance;

(ii) the amount of monthly income otherwise available to the community spouse;

(iii) the computation of the spousal share of resources under Subsection (4);

(iv) the attribution of resources under Subsection (6); or

(v) the determination of the community spouse resource allocation.

(12) (a) An institutionalized spouse may transfer an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to or for the sole benefit of the community spouse.

(b) The transfer under Subsection (12)(a) shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account the time necessary to obtain a court order under Subsection (12)(c).

(c) Chapter 19, Medical Benefits Recovery Act, does not apply if a court has entered an order against an institutionalized spouse for the support of the community spouse.

Section 18. Section **31A-8a-103** is amended to read:

31A-8a-103. Scope and purposes.

(1) A person shall comply with the provisions of this chapter if the person operates a health discount program in this state.

(2) Notwithstanding any provision in this title, a person who only operates or markets a health discount program is exempt from:

(a) Section 31A-4-113;

(b) Section 31A-4-113.5;

(c) Chapter 6a, Service Contracts;

(d) Chapter 7, Nonprofit Health Service Insurance Corporations;

(e) Section 31A-8-209;

(f) Section 31A-8-211;

(g) Section 31A-8-214;

(h) [~~Chapters 9 through~~] Chapter 9, Insurance Fraternals, Chapter 10, Annuities, Chapter 11, Motor Clubs, and Chapter 12, State Risk Management Fund;

(i) [~~Chapters 17~~] Chapter 17, Determination of Financial Condition, and Chapter 18, Investments;

(j) Chapter 19a, Utah Rate Regulation Act;

(k) Sections 31A-23a-103 and 31A-23a-104;

(l) [~~Chapters 25~~] Chapter 25, Third Party Administrators, and Chapter 26, Insurance Adjusters;

(m) [~~Chapters 28~~] Chapter 28, Guaranty Associations, and Chapter 29, Comprehensive Health Insurance Pool Act; and

(n) [~~Chapters 35 through~~] Chapter 35, Bail Bond Act, Chapter 36, Life Settlements Act, Chapter 37, Captive Insurance Companies Act, and Chapter 38, Federal Health Care Tax Credit Program Act.

(3) A person licensed under this title as an accident and health insurer or health maintenance organization:

(a) is not required to obtain a license as required by Section 31A-8a-201 to operate a health discount program; and

(b) is required to comply with all other provisions of this chapter.

(4) The purposes of this chapter include:

(a) full disclosure in the sale of health discount programs;

(b) reasonable regulation of the marketing and disclosure practices of health discount program operators; and

(c) licensing standards for health discount programs.

(5) Nothing in this chapter prohibits a health discount program operator from marketing a health discount program operator's own services without a health discount program marketer license.

Section 19. Section **31A-17-503** is amended to read:

31A-17-503. Actuarial opinion of reserves.

(1) This section becomes operative on December 31, 1993.

(2) General: Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are

consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered to be necessary to its scope.

(3) Actuarial analysis of reserves and assets supporting reserves:

(a) Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by Subsection (2), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including the benefits under the expenses associated with the policies and contracts.

(b) The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may consider necessary in order to render the opinion required by this section.

(4) Requirement for opinion under Subsection (3): Each opinion required by Subsection (3) shall be governed by the following provisions:

(a) A memorandum, in form and substance acceptable to the commissioner as specified by rule, shall be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rule or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(5) Requirement for all opinions: Every opinion shall be governed by the following provisions:

(a) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1993.

(b) The opinion shall apply to all business in force including individual and group

health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(c) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by rule prescribe.

(d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(e) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth by department rule.

(f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(g) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in rules by the commissioner.

(h) (i) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, are considered protected records under Section 63G-2-305 and may not be made public and are not subject to subpoena under Subsection 63G-2-202(7), other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or rules promulgated under this section.

(ii) However, the memorandum or other material may otherwise be released by the commissioner:

[~~(i)~~] (A) with the written consent of the company; or

[~~(ii)~~] (B) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

(iii) Once any portion of the confidential memorandum is cited in its marketing or is cited before any governmental agency other than the department or is released to the news

media, all portions of the memorandum are no longer confidential.

Section 20. Section **31A-17-512** is amended to read:

31A-17-512. Reserve calculation -- Indeterminate premium plans.

[~~(1)~~] In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in Sections 31A-17-507, 31A-17-508, and 31A-17-511, the reserves which are held under any such plan shall:

[~~(a)~~] (1) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

[~~(b)~~] (2) be computed by a method which is consistent with the principles of this part, as determined by rules promulgated by the commissioner.

Section 21. Section **31A-22-408** is amended to read:

31A-22-408. Standard Nonforfeiture Law for Life Insurance.

(1) This section is known as the "Standard Nonforfeiture Law for Life Insurance." It does not apply to group life insurance.

(2) In the case of policies issued on or after July 1, 1961, no policy of life insurance, except as stated in Subsection (8), may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified, and are essentially in compliance with Subsection (8):

(a) That, in the event of default in any premium payment, after premiums have been paid for at least one full year the company will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as is specified in this section. In lieu of that stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment

benefits.

(b) That, upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as is specified in this section.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default.

(d) That, if the policy shall have been paid by the completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value in the amount specified in this section.

(e) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation

has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(g) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

(h) The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy with the consent of the commissioner; provided, however, that the policy shall remain in full force and effect until the insurer has made the payment.

(3) (a) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by Subsection (2), shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

[~~(a)~~] (i) the then present value of the adjusted premiums as defined in Subsections (5) and (6), corresponding to premiums which would have fallen due on and after such anniversary[~~,~~]; and

[~~(b)~~] (ii) the amount of any indebtedness to the company on the policy.

(b) Provided, however, that for any policy issued on or after the operative date of Subsection (6)(d) as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in [~~the first paragraph of this subsection~~] Subsection (3)(a) shall be an amount not less than the sum of the cash surrender value as defined in [~~such paragraph~~] Subsection (3)(a) for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in [~~such paragraph~~] Subsection (3)(a) for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

(c) Provided, further, that for any family policy issued on or after the operative date of Subsection (6)(d) as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age 71,

the cash surrender value referred to in [~~the first paragraph of this subsection~~] Subsection (3)(a) shall be an amount not less than the sum of the cash surrender value as defined in [~~such paragraph~~] Subsection (3)(a) for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in [~~such paragraph~~] Subsection (3)(a) for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

(d) Any cash surrender value available within 30 days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by Subsection (2) shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(5) (a) (i) This Subsection (5)[~~(a)~~] does not apply to policies issued on or after the operative date of Subsection (6)(d) as defined therein.

(ii) Except as provided in Subsection (5)(c), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

[~~(i)~~] (A) the then present value of the future guaranteed benefits provided for by the policy;

[~~(ii)~~] (B) 2% of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount if the amount of insurance varies with duration of the policy;

[~~(iii)~~] (C) 40% of the adjusted premium for the first policy year; and

[~~(iv)~~] (D) 25% of either the adjusted premium for the first policy year or the adjusted

premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(iii) Provided, however, that in applying the percentages specified in Subsections (5)(a)[~~(iii)~~](ii)(C) and [~~(iv)~~] (D), no adjusted premium shall be considered to exceed 4% of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this [~~section~~] Subsection (5) shall be the date as of which the rated age of the insured is determined.

(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this [~~section~~] Subsection (5) shall be considered to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

(c) (i) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to the sum of:

[~~(i)~~] (A) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased[~~,~~]; and

(B) during the period for which premiums for such term insurance benefits are payable, [~~by (ii)~~] the adjusted premiums for such term insurance[~~, the~~].

(ii) The foregoing items [~~(i) and (ii) of this~~] (A) and (B) of Subsection (5)(c)(i) being calculated separately and as specified in Subsections (5)(a) and (b) except that, for the purposes of [~~(ii), (iii), and (iv)~~] (B), (C), and (D) of Subsection (5)(a)(ii), the amount of insurance or equivalent uniform amount of insurance used in calculation of the adjusted premiums referred to in [~~(ii)~~] (B) of [~~this~~] Subsection (5)(c)(i) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in [~~(i)~~] (A) of this Subsection (5)(c)(i).

(d) Except as otherwise provided in Subsection (6), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding 3-1/2% per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(6) (a) This Subsection (6)(a) does not apply to ordinary policies issued on or after the operative date of Subsection (6)(d) as defined therein. In the case of ordinary policies issued on or after the operative date of Subsection (6)(a) as defined in Subsection (6)(b), all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest as specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest may not exceed 3-1/2% per annum for policies issued before June 1, 1973, 4% per annum for policies issued on or after May 31, 1973, and before April 2, 1980, and the rate of interest may not exceed 5-1/2% per annum for policies issued after April 2, 1980, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding 6-1/2% per annum may be used, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1958 Extended

Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(b) Any company may file with the commissioner a written notice of its election to comply with the provisions of Subsection (6)(a) after a specified date before January 1, 1966. After filing such notice, then upon such specified date, which is the operative date of Subsection (6)(a) for such company, this Subsection (6)(a) shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of Subsection (6)(a) for such company is January 1, 1966.

(c) (i) This Subsection (6)(c) does not apply to industrial policies issued after the operative date of Subsection (6)(d) as defined therein. In the case of industrial policies issued on or after the operative date of this Subsection (6)(c) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest may not exceed 3-1/2% per annum for policies issued before June 1, 1973, 4% per annum for policies issued after May 31, 1973, and before April 2, 1980, and 5-1/2% per annum for policies issued after April 2, 1980, except that for any single premium whole life or endowment insurance policy issued after April 2, 1980, a rate of interest not exceeding 6-1/2% per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(ii) Any company may file with the commissioner a written notice of its election to comply with the provisions of this Subsection (6)(c) after a specified date before January 1, 1968. After filing such notice, then upon that specified date, which is the operative date of this Subsection (6)(c) for such company, this Subsection (6)(c) shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such

election, the operative date of this Subsection (6)(c) for such company shall be January 1, 1968.

(d) (i) This Subsection (6)(d) applies to all policies issued on or after the operative date of this Subsection (6)(d) as defined herein. Except as provided in Subsection (6)(d)(vii), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of policy, of all adjusted premiums shall be equal to the sum of:

(A) the then present value of the future guaranteed benefits provided for by the policy;

(B) 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(C) 125% of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in applying the percentage specified in (C), no nonforfeiture net level premium shall be considered to exceed 4% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years. The date of issue of a policy for the purpose of this Subsection (6)(d) shall be the date as of which the rated age of the insured is determined.

(ii) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(iii) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums do not

change from those stipulated by the policy immediately after the change.

(iv) Except as otherwise provided in Subsection (6)(d)(vii), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of:

(A) the sum of:

(I) the then present value of the then future guaranteed benefits provided for by the policy; and

(II) the additional expense allowance, if any[~~,~~]; over

(B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(v) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:

(A) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and

(B) 125% of the increase, if positive, in the nonforfeiture net level premium.

(vi) The recalculated nonforfeiture net level premium shall be equal to[~~the result obtained by dividing (A) by (B) where~~]:

(A) [~~equals~~] the sum of:

(I) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(II) the present value of the increase in future guaranteed benefits provided for by the policy; [~~and~~] divided by

(B) [~~equals~~] the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(vii) Notwithstanding any other provision of this Subsection (6)(d) to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(viii) All adjusted premiums and present values referred to in this section shall:

(A) for all policies of ordinary insurance be calculated on the basis of:

[~~(A)~~] (I) the Commissioner's 1980 Standard Ordinary Mortality Table; or

[~~(B)~~] (II) at the election of the company for any one or more specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; [~~shall~~]

(B) for all policies of industrial insurance be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table; and [~~shall~~]

(C) for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in [~~this~~] Subsection (6)(d)(x), for policies issued in that calendar year. [~~Provided, however, that:~~]

(ix) Notwithstanding Subsection (6)(d)(viii):

[~~(I)~~] (A) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in [~~this~~] Subsection (6)(d)(x), for policies issued in the immediately preceding calendar year.

[~~(II)~~] (B) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by Subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

[~~(III)~~] (C) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

[~~(IV)~~] (D) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioner's 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

[~~(V)~~] (E) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

[~~(VI)~~] (F) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard, may be substituted for the Commissioner's 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioner's 1980 Extended Term Insurance Table.

[~~(VII)~~] (G) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioner's 1961 Industrial Extended Term Insurance Table.

[~~(ix)~~] (x) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearest one-fourth of 1%.

[~~(x)~~] (xi) Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

[~~(xi)~~] (xii) After the effective date of this Subsection (6)(d), any company may, at any time before January 1, 1989, file with the commissioner a written notice of its election to comply with the provisions of this subsection with regard to any number of plans of insurance after a specified date before January 1, 1989, which specified date shall be the operative date of

this Subsection (6)(d) for the plan or plans, but if a company elects to make the provisions of this subsection operative before January 1, 1989, for fewer than all plans, the company shall comply with rules adopted by the commissioner. There is no limit to the number of times this election may be made. If the company makes no such election, the operative date of this subsection for such company shall be January 1, 1989.

(7) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on the estimates of future experience, or in the case of any plan of life insurance which is of such nature that minimum values cannot be determined by the methods described in Subsection (2), (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d) herein, then:

(a) the insurer shall demonstrate to the satisfaction of the commissioner that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Subsection (2), (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d);

(b) the plan of life insurance shall satisfy the commissioner that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(c) the cash surrender values and paid-up nonforfeiture benefits provided by the plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by rules adopted by the commissioner.

(8) (a) (i) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.

(ii) All values referred to in Subsections (3), (4), (5), and (6) [~~of this section~~] may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death.

(iii) The net value of any paid-up additions, other than paid-up term additions, may not be less than the amounts used to provide such additions.

(b) Notwithstanding the provisions of Subsection (3), additional benefits specified in

Subsection (8)(c) and premiums for all such additional benefits shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(c) Additional benefits referred to in Subsection (8)(b) include benefits payable:

[~~(a)~~] (i) in the event of death or dismemberment by accident or accidental means[~~,~~];

[~~(b)~~] (ii) in the event of total and permanent disability[~~,~~];

[~~(c)~~] (iii) as reversionary annuity or deferred reversionary annuity benefits[~~,~~];

[~~(d)~~] (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply[~~,~~];

[~~(e)~~] (v) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, if uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child[~~,~~]; and

[~~(f)~~] (vi) as other policy benefits additional to life insurance endowment benefits[~~, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits~~].

(9) (a) This Subsection (9), in addition to all other applicable subsections of this section, applies to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than 2/10 of 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years, from the sum of:

[~~(a)~~] (i) the greater of zero and the basic cash value hereinafter specified[~~,~~]; and

[~~(b)~~] (ii) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

(b) The basic cash value shall be equal to the present value, on such anniversary of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such

anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in Subsection (3) or (5), whichever is applicable, shall be the same as are the effects specified in Subsection (3) or (5), whichever is applicable, on the cash surrender values defined in that subsection.

(c) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in Subsection (5) or (6)(d), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

[~~(a)~~] (i) shall be the same percentage for each policy year between the second policy anniversary and the later of:

[~~(i)~~] (A) the fifth policy anniversary; and

[~~(ii)~~] (B) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

[~~(b)~~] (ii) shall be such that no percentage after the later of the two policy anniversaries specified in Subsection (9)(a) may apply to fewer than five consecutive policy years.

(d) Provided, that no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in Subsection (5) or Subsection (6)(d), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic value.

(e) All adjusted premiums and present values referred to in this Subsection (9) shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this nonforfeiture law. The cash surrender values referred to in this Subsection (9) shall include any endowment benefits provided for by the policy.

(f) Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum

amounts in Subsections (2), (3), (4), (5), (6), and (8). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as Subsections (8)(a) through (f) shall conform with the principles of this Subsection (9).

(10) (a) This section does not apply to any of the following:

[~~(a)~~] (i) reinsurance;

[~~(b)~~] (ii) group insurance;

[~~(c)~~] (iii) pure endowment;

[~~(d)~~] (iv) an annuity or reversionary annuity contract;

[~~(e)~~] (v) a term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

[~~(f)~~] (vi) a term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in Subsections (5) and (6), is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance, and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

[~~(g)~~] (vii) a policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in Subsections (3), (4), (5), and (6) exceeds 2-1/2% of the amount of insurance at the beginning of the same policy year; or

[~~(h)~~] (viii) a policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

(b) For purposes of determining the applicability of this section, the age of expiry for a joint term insurance policy shall be the age of expiry of the oldest life.

(11) The commissioner may adopt rules interpreting, describing, and clarifying the application of this nonforfeiture law to any form of life insurance for which the interpretation, description, or clarification is considered necessary by the commissioner, including unusual and new forms of life insurance.

Section 22. Section **31A-22-626** is amended to read:

31A-22-626. Coverage of diabetes.

(1) As used in this section, "diabetes" includes individuals with:

(a) complete insulin deficiency or type 1 diabetes;

(b) insulin resistant with partial insulin deficiency or type 2 diabetes; and

(c) elevated blood glucose levels induced by pregnancy or gestational diabetes.

(2) The commissioner shall establish, by rule, minimum standards of coverage for diabetes for accident and health insurance policies that provide a health insurance benefit before July 1, 2000.

(3) In making rules under Subsection (2), the commissioner shall require rules:

(a) with durational limits, amount limits, deductibles, and coinsurance for the treatment of diabetes equitable or identical to coverage provided for the treatment of other illnesses or diseases; and

(b) that provide coverage for:

(i) diabetes self-management training and patient management, including medical nutrition therapy as defined by rule, provided by an accredited or certified program and referred by an attending physician within the plan and consistent with the health plan provisions for self-management education:

(A) recognized by the federal [~~Health Care Financing Administration~~] Centers for Medicare and Medicaid Services; or

(B) certified by the Department of Health; and

(ii) the following equipment, supplies, and appliances to treat diabetes when medically necessary:

(A) blood glucose monitors, including those for the legally blind;

(B) test strips for blood glucose monitors;

(C) visual reading urine and ketone strips;

(D) lancets and lancet devices;

(E) insulin;

(F) injection aides, including those adaptable to meet the needs of the legally blind, and infusion delivery systems;

(G) syringes;

(H) prescriptive oral agents for controlling blood glucose levels; and

(I) glucagon kits.

Section 23. Section **31A-22-640** is amended to read:

31A-22-640. Insurer and pharmacy benefit management services -- Registration -- Maximum allowable cost -- Audit restrictions.

(1) For purposes of this section:

(a) "Maximum allowable cost" means:

(i) a maximum reimbursement amount for a group of pharmaceutically and therapeutically equivalent drugs; or

(ii) any similar reimbursement amount that is used by a pharmacy benefit manager to reimburse pharmacies for multiple source drugs.

(b) "Obsolete" means a product that may be listed in national drug pricing compendia but is no longer available to be dispensed based on the expiration date of the last lot manufactured.

(c) " Pharmacy benefit manager" means a person or entity that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of an insurer as defined in Subsection 31A-22-636(1).

(2) An insurer and an insurer's pharmacy benefit manager is subject to the pharmacy audit provisions of Section 58-17b-622.

(3) A pharmacy benefit manager shall not use maximum allowable cost as a basis for reimbursement to a pharmacy unless:

(a) the drug is listed as "A" or "B" rated in the most recent version of the United States Food and Drug Administration's approved drug products with therapeutic equivalent evaluations, also known as the "Orange Book," or has an "NR" or "NA" rating or similar rating by a nationally recognized reference; and

(b) the drug is:

(i) generally available for purchase in this state from a national or regional wholesaler; and

(ii) not obsolete.

(4) The maximum allowable cost may be determined using comparable and current data on drug prices obtained from multiple nationally recognized, comprehensive data sources,

including wholesalers, drug file vendors, and pharmaceutical manufacturers for drugs that are available for purchase by pharmacies in the state.

(5) For every drug for which the pharmacy benefit manager uses maximum allowable cost to reimburse a contracted pharmacy, the pharmacy benefit manager shall:

(a) include in the contract with the pharmacy information identifying the national drug pricing compendia and other data sources used to obtain the drug price data;

(b) review and make necessary adjustments to the maximum allowable cost, using the most recent data sources identified in Subsection (5)(a)[~~(i)~~], at least once per week;

(c) provide a process for the contracted pharmacy to appeal the maximum allowable cost in accordance with Subsection (6); and

(d) include in each contract with a contracted pharmacy a process to obtain an update to the pharmacy product pricing files used to reimburse the pharmacy in a format that is readily available and accessible.

(6) (a) The right to appeal in Subsection (5)(d) shall be:

(i) limited to 21 days following the initial claim adjudication; and

(ii) investigated and resolved by the pharmacy benefit manager within 14 business days.

(b) If an appeal is denied, the pharmacy benefit manager shall provide the contracted pharmacy with the reason for the denial and the identification of the national drug code of the drug that may be purchased by the pharmacy at a price at or below the price determined by the pharmacy benefit manager.

(7) The contract with each pharmacy shall contain a dispute resolution mechanism in the event either party breaches the terms or conditions of the contract.

(8) (a) To conduct business in the state, a pharmacy benefit manager shall register with the Division of Corporations and Commercial Code within the Department of Commerce and annually renew the registration. To register under this section, the pharmacy benefit manager shall submit an application which shall contain only the following information:

(i) the name of the pharmacy benefit manager;

(ii) the name and contact information for the registered agent for the pharmacy benefit manager; and

(iii) if applicable, the federal employer identification number for the pharmacy benefit

manager.

(b) The Department of Commerce may establish a fee in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, for the initial registration and the annual renewal of the registration, which may not exceed $100 per year.

(c) The following entities do not have to register as a pharmacy benefit manager under Subsection (8)(a) when the entity is providing formulary services to its own patients, employees, members, or beneficiaries:

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(ii) a pharmacy licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

(iii) a health care professional licensed under Title 58, Occupations and Professions;

(iv) a health insurer; and

(v) a labor union.

(9) This section does not apply to a pharmacy benefit manager when the pharmacy benefit manager is providing pharmacy benefit management services on behalf of the state Medicaid program.

Section 24. Section **32B-3-201** is amended to read:

32B-3-201. Nature of adjudicative proceedings under title.

(1) An adjudicative proceeding under this title, including a disciplinary proceeding, is a civil action, notwithstanding whether at issue in the adjudicative proceeding is a violation of statute that can be prosecuted criminally.

(2) Unless specifically adopted in this title, a procedure or [~~principal~~] principle that is applicable to a criminal proceeding does not apply to an adjudicative proceeding permitted under this title including:

(a) Title 76, Chapter 1, General Provisions;

(b) Title 76, Chapter 2, Principles of Criminal Responsibility;

(c) Title 76, Chapter 3, Punishments; and

(d) Title 76, Chapter 4, Inchoate Offenses.

(3) (a) The burden of proof in an adjudicative proceeding under this title is by a preponderance of the evidence.

(b) If the subject of an adjudicative proceeding under this title asserts an affirmative

defense, the subject has the burden of proof to establish the affirmative defense by the preponderance of the evidence.

(4) In an adjudicative proceeding under this title, to find a violation of this title the commission:

(a) is required to determine whether the conduct that constitutes the violation occurred; and

(b) is not required to make a finding of knowledge or intent unless knowledge or intent is expressly made an element of the violation by statute.

Section 25. Section **32B-8-102** is amended to read:

32B-8-102. Definitions.

As used in this chapter:

(1) "Boundary of a resort building" means the physical boundary of the land reasonably related to a resort building and any structure or improvement to that land as determined by the commission.

(2) "Dwelling" means a portion of a resort building:

(a) owned by one or more individuals;

(b) that is used or designated for use as a residence by one or more persons; and

(c) that may be rented, loaned, leased, or hired out for a period of no longer than 30 consecutive days by a person who uses it for a residence.

(3) "Engaged in the management of the resort" may be defined by the commission by rule.

(4) "Invitee" means an individual who in accordance with Subsection 32B-8-304(12) is authorized to use a resort spa by a host who is:

(a) a resident; or

(b) a public customer.

(5) "Provisions applicable to a sublicense" means:

(a) for a full-service restaurant sublicense, Chapter 6, Part 2, Full-service Restaurant License;

(b) for a limited-service restaurant sublicense, Chapter 6, Part 3, Limited-service Restaurant License;

(c) for a club sublicense, Chapter 6, Part 4, Club License;

(d) for an on-premise banquet sublicense, Chapter 6, Part 6, On-premise Banquet License;

(e) for an on-premise beer retailer sublicense, Chapter 6, Part 7, On-premise Beer Retailer License; and

(f) for a resort spa sublicense, Part 3, Resort Spa Sublicense.

(6) "Public customer" means an individual who holds a customer card in accordance with Subsection 32B-8-304[~~(13)~~](12).

(7) "Resident" means an individual who:

(a) owns a dwelling located within a resort building; or

(b) rents lodging accommodations for 30 consecutive days or less from:

(i) an owner of a dwelling described in Subsection (7)(a); or

(ii) the resort licensee.

(8) "Resort" means a location:

(a) on which is located one resort building; and

(b) that is affiliated with a ski area that physically touches the boundary of the resort building.

(9) "Resort building" means a building:

(a) that is primarily operated to provide dwellings or lodging accommodations;

(b) that has at least 150 units that consist of a dwelling or lodging accommodations;

(c) that consists of at least 400,000 square feet:

(i) including only the building itself; and

(ii) not including areas such as above ground surface parking; and

(d) of which at least 50% of the units described in Subsection (9)(b) consist of dwellings owned by a person other than the resort licensee.

(10) "Resort spa" means a spa, as defined by rule by the commission, that is within the boundary of a resort building.

(11) "Sublicense" means:

(a) a full-service restaurant sublicense;

(b) a limited-service restaurant sublicense;

(c) a club sublicense;

(d) an on-premise banquet sublicense;

(e) an on-premise beer retailer sublicense; and

(f) a resort spa sublicense.

(12) "Sublicense premises" means a building, enclosure, or room used pursuant to a sublicense in connection with the storage, sale, furnishing, or consumption of an alcoholic product, unless otherwise defined in this title or in the rules made by the commission.

Section 26. Section **34-48-202** is amended to read:

34-48-202. Permitted actions by an employer.

(1) This chapter does not prohibit an employer from doing any of the following:

(a) requesting or requiring an employee to disclose a username or password required only to gain access to the following:

(i) an electronic communications device supplied by or paid for in whole or in part by the employer; or

(ii) an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, and used for the employer's business purposes;

(b) disciplining or discharging an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal Internet account without the employer's authorization;

(c) conducting an investigation or requiring an employee to cooperate in an investigation in any of the following:

(i) if there is specific information about activity on the employee's personal Internet account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or

(ii) if the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's personal Internet account;

(d) restricting or prohibiting an employee's access to certain websites while using an electronic communications device supplied by, or paid for in whole or in part by, the employer or while using an employer's network or resources, in accordance with state and federal law; or

(e) monitoring, reviewing, accessing, or blocking electronic data stored on an electronic communications device supplied by, or paid for in whole or in part by, the employer,

or stored on an employer's network, in accordance with state and federal law.

(2) Conducting an investigation or requiring an employee to cooperate in an investigation as specified in Subsection (1)(c) includes requiring the employee to share the content that has been reported in order to make a factual determination.

(3) This chapter does not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established under federal law, by a self-regulatory organization under the Securities and Exchange Act of 1934, 15 U.S.C. Sec. 78c(a)(26), or in the course of a law enforcement employment application or law enforcement officer conduct investigation performed by a law enforcement agency.

(4) This chapter does not prohibit or restrict an employer from viewing, accessing, or using information about an employee or applicant that can be obtained without the information described in Subsection [~~34A-48-201~~] 34-48-201(1) or that is available in the public domain.

Section 27. Section **34A-2-111** is amended to read:

34A-2-111. Managed health care programs -- Other safety programs.

(1) As used in this section:

(a) (i) "Health care provider" means a person who furnishes treatment or care to persons who have suffered bodily injury.

(ii) "Health care provider" includes:

(A) a hospital;

(B) a clinic;

(C) an emergency care center;

(D) a physician;

(E) a nurse;

(F) a nurse practitioner;

(G) a physician's assistant;

(H) a paramedic; or

(I) an emergency medical technician.

(b) "Physician" means any health care provider licensed under:

(i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(ii) Title 58, Chapter 24b, Physical Therapy Practice Act;

(iii) Title 58, Chapter 67, Utah Medical Practice Act;

(iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

(vi) Title 58, Chapter 70a, Physician Assistant Act;

(vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;

(viii) Title 58, Chapter 72, Acupuncture Licensing Act;

(ix) Title 58, Chapter 73, Chiropractic Physician Practice Act; and

(x) Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse.

(c) "Preferred health care facility" means a facility:

(i) that is a health care facility as defined in Section 26-21-2; and

(ii) designated under a managed health care program.

(d) "Preferred provider physician" means a physician designated under a managed health care program.

(e) "Self-insured employer" is as defined in Section 34A-2-201.5.

(2) (a) A self-insured employer and insurance carrier may adopt a managed health care program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).

(b) (i) A preferred provider program may be developed if the preferred provider program allows a selection by the employee of more than one physician in the health care specialty required for treating the specific problem of an industrial patient.

(ii) (A) Subject to the requirements of this section, if a preferred provider program is developed by an insurance carrier or self-insured employer, an employee is required to use:

(I) preferred provider physicians; and

(II) preferred health care facilities.

(B) If a preferred provider program is not developed, an employee may have free choice of health care providers.

(iii) The failure to do the following may, if the employee has been notified of the preferred provider program, result in the employee being obligated for any charges in excess of the preferred provider allowances:

(A) use a preferred health care facility; or

(B) initially receive treatment from a preferred provider physician.

(iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a self-insured employer or other employer may:

(A) (I) (Aa) have its own health care facility on or near its worksite or premises; and

(Bb) continue to contract with other health care providers; or

(II) operate a health care facility; and

(B) require employees to first seek treatment at the provided health care or contracted facility.

(v) An employee subject to a preferred provider program or employed by an employer having its own health care facility may procure the services of any qualified health care provider:

(A) for emergency treatment, if a physician employed in the preferred provider program or at the health care facility is not available for any reason;

(B) for conditions the employee in good faith believes are nonindustrial; or

(C) when an employee living in a rural area would be unduly burdened by traveling to:

(I) a preferred provider physician; or

(II) a preferred health care facility.

(c) (i) (A) An employer, insurance carrier, or self-insured employer may enter into contracts with the following for the purposes listed in Subsection (2)(c)(i)(B):

(I) health care providers;

(II) medical review organizations; or

(III) vendors of medical goods, services, and supplies including medicines.

(B) A contract described in Subsection [~~(1)~~] (2)(c)(i)(A) may be made for the following purposes:

(I) insurance carriers or self-insured employers may form groups in contracting for managed health care services with health care providers;

(II) peer review;

(III) methods of utilization review;

(IV) use of case management;

(V) bill audit;

(VI) discounted purchasing; and

(VII) the establishment of a reasonable health care treatment protocol program

including the implementation of medical treatment and quality care guidelines that are:

(Aa) scientifically based;

(Bb) peer reviewed; and

(Cc) consistent with standards for health care treatment protocol programs that the commission shall establish by rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including the authority of the commission to approve a health care treatment protocol program before it is used or disapprove a health care treatment protocol program that does not comply with this Subsection (2)(c)(i)(B)(VII).

(ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a condition of insuring an entity in its insurance contract.

(3) (a) In addition to a managed health care program, an insurance carrier may require an employer to establish a work place safety program if the employer:

(i) has an experience modification factor of 1.00 or higher, as determined by the National Council on Compensation Insurance; or

(ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or higher.

(b) A workplace safety program may include:

(i) a written workplace accident and injury reduction program that:

(A) promotes safe and healthful working conditions; and

(B) is based on clearly stated goals and objectives for meeting those goals; and

(ii) a documented review of the workplace accident and injury reduction program each calendar year delineating how procedures set forth in the program are met.

(c) A written workplace accident and injury reduction program permitted under Subsection (3)(b)(i) should describe:

(i) how managers, supervisors, and employees are responsible for implementing the program;

(ii) how continued participation of management will be established, measured, and maintained;

(iii) the methods used to identify, analyze, and control new or existing hazards, conditions, and operations;

(iv) how the program will be communicated to all employees so that the employees are

informed of work-related hazards and controls;

(v) how workplace accidents will be investigated and corrective action implemented; and

(vi) how safe work practices and rules will be enforced.

(d) For the purposes of a workplace accident and injury reduction program of an eligible employer described in Subsection 34A-2-103(7)(f), the workplace accident and injury reduction program shall:

(i) include the provisions described in Subsections (3)(b) and (c), except that the employer shall conduct a documented review of the workplace accident and injury reduction program at least semiannually delineating how procedures set forth in the workplace accident and injury reduction program are met; and

(ii) require a written agreement between the employer and all contractors and subcontractors on a project that states that:

(A) the employer has the right to control the manner or method by which the work is executed;

(B) if a contractor, subcontractor, or any employee of a contractor or subcontractor violates the workplace accident and injury reduction program, the employer maintains the right to:

(I) terminate the contract with the contractor or subcontractor;

(II) remove the contractor or subcontractor from the work site; or

(III) require that the contractor or subcontractor not permit an employee that violates the workplace accident and injury reduction program to work on the project for which the employer is procuring work; and

(C) the contractor or subcontractor shall provide safe and appropriate equipment subject to the right of the employer to:

(I) inspect on a regular basis the equipment of a contractor or subcontractor; and

(II) require that the contractor or subcontractor repair, replace, or remove equipment the employer determines not to be safe or appropriate.

(4) The premiums charged to any employer who fails or refuses to establish a workplace safety program pursuant to Subsection (3)(b)(i) or (ii) may be increased by 5% over any existing current rates and premium modifications charged that employer.

Section 28. Section **34A-2-410** is amended to read:

34A-2-410. Temporary disability -- Amount of payments -- State average weekly wage defined.

(1) (a) Subject to Subsections (1)(b) and (5), in case of temporary disability, so long as the disability is total, the employee shall receive 66-2/3% of that employee's average weekly wages at the time of the injury but:

(i) not more than a maximum of 100% of the state average weekly wage at the time of the injury per week; and

(ii) (A) subject to Subsections (1)(a)(ii)(B) and (C), not less than a minimum of $45 per week plus:

(I) $5 for a dependent spouse; and

(II) $5 for each dependent child under the age of 18 years, up to a maximum of four dependent children;

(B) not to exceed the average weekly wage of the employee at the time of the injury; and

(C) not to exceed 100% of the state average weekly wage at the time of the injury per week.

(b) In no case shall the compensation benefits exceed 312 weeks at the rate of 100% of the state average weekly wage at the time of the injury over a period of 12 years from the date of the injury.

(2) If a light duty medical release is obtained before the employee reaches a fixed state of recovery and no light duty employment is available to the employee from the employer, temporary disability benefits shall continue to be paid.

(3) The "state average weekly wage" as referred to in this chapter and Chapter 3, Utah Occupational Disease Act, shall be determined by the commission as follows:

(a) On or before June 1 of each year, the total wages reported on contribution reports to the Unemployment Insurance Division for the preceding calendar year shall be divided by the average monthly number of insured workers determined by dividing the total insured workers reported for the preceding year by 12.

(b) The average annual wage obtained under Subsection (3)(a) shall be divided by 52.

(c) The average weekly wage determined under Subsection (3)(b) is rounded to the

nearest dollar.

(4) The state average weekly wage determined under Subsection (3) shall be used as the basis for computing the maximum compensation rate for:

(a) injuries or disabilities arising from occupational disease that occurred during the 12-month period commencing July 1 following the June 1 determination; and

(b) any death resulting from the injuries or disabilities arising from occupational disease.

(5) The commission may reduce or terminate temporary disability compensation in accordance with Section [~~34-2-410.5~~] 34A-2-410.5.

Section 29. Section **36-11-401** is amended to read:

36-11-401. Penalties.

(1) Any person who intentionally violates Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, [~~36-11-308~~;] or 36-11-403, is subject to the following penalties:

(a) an administrative penalty of up to $1,000 for each violation; and

(b) for each subsequent violation of that same section within 24 months, either:

(i) an administrative penalty of up to $5,000; or

(ii) suspension of the violator's lobbying license for up to one year, if the person is a lobbyist.

(2) Any person who intentionally fails to file a financial report required by this chapter, omits material information from a license application form or financial report, or files false information on a license application form or financial report, is subject to the following penalties:

(a) an administrative penalty of up to $1,000 for each violation; or

(b) suspension of the violator's lobbying license for up to one year, if the person is a lobbyist.

(3) Any person who intentionally fails to file a financial report required by this chapter on the date that it is due shall, in addition to the penalties, if any, imposed under Subsection (1) or (2), pay a penalty of up to $50 per day for each day that the report is late.

(4) (a) When a lobbyist is convicted of violating Section 76-8-103, 76-8-107, 76-8-108, or 76-8-303, the lieutenant governor shall suspend the lobbyist's license for up to five years

from the date of the conviction.

(b) When a lobbyist is convicted of violating Section 76-8-104 or 76-8-304, the lieutenant governor shall suspend a lobbyist's license for up to one year from the date of conviction.

(5) (a) Any person who intentionally violates Section 36-11-301, 36-11-302, or 36-11-303 is guilty of a class B misdemeanor.

(b) The lieutenant governor shall suspend the lobbyist license of any person convicted under any of these sections for up to one year.

(c) The suspension shall be in addition to any administrative penalties imposed by the lieutenant governor under this section.

(d) Any person with evidence of a possible violation of this chapter may submit that evidence to the lieutenant governor for investigation and resolution.

(6) A lobbyist who does not complete the training required by Section 36-11-307 is subject to the following penalties:

(a) an administrative penalty of up to $1,000 for each failure to complete the training required by Section 36-11-307; and

(b) for two or more failures to complete the training required by Section 36-11-307 within 24 months, suspension of the lobbyist's lobbying license.

(7) Nothing in this chapter creates a third-party cause of action or appeal rights.

Section 30. Section **38-1a-102** is amended to read:

38-1a-102. Definitions.

As used in this chapter:

(1) "Alternate means" means a method of filing a legible and complete notice or other document with the registry other than electronically, as established by the division by rule.

(2) "Anticipated improvement" means the improvement:

(a) for which preconstruction service is performed; and

(b) that is anticipated to follow the performing of preconstruction service.

(3) "Applicable county recorder" means the office of the recorder of each county in which any part of the property on which a claimant claims or intends to claim a preconstruction or construction lien is located.

(4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which

the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting shares or other ownership interest.

(5) "Claimant" means a person entitled to claim a preconstruction or construction lien.

(6) "Compensation" means the payment of money for a service rendered or an expense incurred, whether based on:

(a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or percentage fee, or commission; or

(b) a combination of the bases listed in Subsection (6)(a).

(7) "Construction lender" means a person who makes a construction loan.

(8) "Construction lien" means a lien under this chapter for construction work.

(9) "Construction loan" does not include a consumer loan secured by the equity in the consumer's home.

(10) "Construction project" means an improvement that is constructed pursuant to an original contract.

(11) "Construction work":

(a) means labor, service, material, or equipment provided for the purpose and during the process of constructing, altering, or repairing an improvement; and

(b) includes scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement.

(12) "Contestable notice" means a notice of preconstruction service under Section 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under Section 38-1a-506.

(13) "Contesting person" means an owner, original contractor, subcontractor, or other interested person.

(14) "Designated agent" means the third party the division contracts with as provided in Section 38-1a-202 to create and maintain the registry.

(15) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(16) "Entry number" means the reference number that:

(a) the designated agent assigns to each notice or other document filed with the

registry; and

(b) is unique for each notice or other document.

(17) "Final completion" means:

(a) the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project, if a permanent certificate of occupancy is required;

(b) the date of the final inspection of the construction work by the local government entity having jurisdiction over the construction project, if an inspection is required under a state-adopted building code applicable to the construction work, but no certificate of occupancy is required;

(c) unless the owner is holding payment to ensure completion of construction work, the date on which there remains no substantial work to be completed to finish the construction work under the original contract, if a certificate of occupancy is not required and a final inspection is not required under an applicable state-adopted building code; or

(d) the last date on which substantial work was performed under the original contract, if, because the original contract is terminated before completion of the construction work defined by the original contract, the local government entity having jurisdiction over the construction project does not issue a certificate of occupancy or perform a final inspection.

(18) "First preliminary notice filing" means a preliminary notice that:

(a) is the earliest preliminary notice filed on the construction project for which the preliminary notice is filed;

(b) is filed on a construction project that, at the time the preliminary notice is filed, has not reached final completion; and

(c) is not cancelled under Section 38-1a-307.

(19) "Government project-identifying information" has the same meaning as defined in Section 38-1b-102.

(20) "Improvement" means:

(a) a building, infrastructure, utility, or other human-made structure or object constructed on or for and affixed to real property; or

(b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection [~~(19)~~] (20)(a).

(21) "Interested person" means a person that may be affected by a construction project.

(22) "Notice of commencement" means a notice required under Section 38-1b-201 for a government project, as defined in Section 38-1b-102.

(23) "Original contract":

(a) means a contract between an owner and an original contractor for preconstruction service or construction work; and

(b) does not include a contract between an owner-builder and another person.

(24) "Original contractor" means a person, including an owner-builder, that contracts with an owner to provide preconstruction service or construction work.

(25) "Owner" means the person that owns the project property.

(26) "Owner-builder" means an owner, including an owner who is also an original contractor, who:

(a) contracts with one or more other persons for preconstruction service or construction work for an improvement on the owner's real property; and

(b) obtains a building permit for the improvement.

(27) "Preconstruction lien" means a lien under this chapter for a preconstruction service.

(28) "Preconstruction service":

(a) means to plan or design, or to assist in the planning or design of, an improvement or a proposed improvement:

(i) before construction of the improvement commences; and

(ii) for compensation separate from any compensation paid or to be paid for construction work for the improvement; and

(b) includes consulting, conducting a site investigation or assessment, programming, preconstruction cost or quantity estimating, preconstruction scheduling, performing a preconstruction construction feasibility review, procuring construction services, and preparing a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan, drawing, specification, or contract document.

(29) "Private project" means a construction project that is not a government project.

(30) "Project property" means the real property on or for which preconstruction service or construction work is or will be provided.

(31) "Registry" means the State Construction Registry under Part 2, State Construction Registry.

(32) "Required notice" means:

(a) a notice of preconstruction service under Section 38-1a-401;

(b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;

(c) a notice of commencement;

(d) a notice of construction loan under Section 38-1a-601;

(e) a notice under Section 38-1a-602 concerning a construction loan default;

(f) a notice of intent to obtain final completion under Section 38-1a-506; or

(g) a notice of completion under Section 38-1a-507.

(33) "Subcontractor" means a person that contracts to provide preconstruction service or construction work to:

(a) a person other than the owner; or

(b) the owner, if the owner is an owner-builder.

(34) "Substantial work" does not include repair work or warranty work.

(35) "Supervisory subcontractor" means a person that:

(a) is a subcontractor under contract to provide preconstruction service or construction work; and

(b) contracts with one or more other subcontractors for the other subcontractor or subcontractors to provide preconstruction service or construction work that the person is under contract to provide.

Section 31. Section **38-8-1** is amended to read:

38-8-1. Definitions.

As used in this chapter:

(1) "Certified mail" means:

(a) a method of mailing that is offered by the United States Postal Service and provides evidence of mailing; or

(b) a method of mailing that is accompanied by a certificate of mailing executed by the individual who caused the notice to be mailed.

(2) "Default" means the failure to perform in a timely manner any obligation or duty described in this chapter or the rental agreement.

(3) "Email" means an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two or more computers or electronic terminals, including electronic messages that are transmitted within or between computer networks.

(4) "Last known address" means the postal address provided by an occupant in a rental agreement or, if the occupant provides a subsequent written notice of a change of address, the postal address provided in the written notice of a change of address.

(5) "Last known email address" means the email address provided by an occupant in a rental agreement or, if the occupant provides a subsequent written notice of a change of address, the email address provided in the written notice of a change of address.

(6) "Occupant" means a person, or the person's sublessee, successor, or assignee, entitled to the use of a storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(7) "Owner" means:

(a) the owner, operator, lessor, or sublessor of a self-service storage facility;

(b) an agent of a person described in Subsection [~~(11)~~] (7)(a); or

(c) any other person authorized by a person described in Subsection [~~(11)~~] (7)(a) to manage the facility or to receive rent from an occupant under a rental agreement.

(8) "Personal property" means movable property not affixed to land and includes goods, merchandise, and household items.

(9) "Rental agreement" means any written agreement or lease that establishes or modifies the terms, conditions, rules, or any other provisions relating to the use and occupancy of a unit or space at a self-service storage facility.

(10) (a) "Self-service storage facility" means real property designed and used for the purpose of renting or leasing individual storage space to occupants who have access to the facility for the purpose of storing personal property.

(b) "Self-service storage facility" does not include:

(i) a warehouse described in Section 70A-7a-102;

(ii) real property used for residential purposes; or

(iii) a facility that issues a warehouse receipt, bill of lading, or other document of title for the personal property stored at the facility.

(11) "Vehicle" means personal property required to be registered with the Motor Vehicle Division pursuant to Title 41, Chapter 1a, Part 2, Registration, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

Section 32. Section **41-6a-1011** is amended to read:

41-6a-1011. Pedestrian vehicles.

(1) As used in this section:

(a) (i) "Pedestrian vehicle" means a self-propelled conveyance designed, manufactured, and intended for the exclusive use of a person with a physical disability.

(ii) A "pedestrian vehicle" may not:

(A) exceed 48 inches in width;

(B) have an engine or motor with more than 300 cubic centimeters displacement or with more than 12 brake horsepower; and

(C) be capable of developing a speed in excess of 30 miles per hour.

(b) "Physical disability" means any bodily impairment which precludes a person from walking or otherwise moving about as a pedestrian.

(2) A pedestrian vehicle operated by a person with a physical disability is exempt from vehicle registration, inspection, and operator license requirements.

(3) (a) A person with a physical disability may operate a pedestrian vehicle with a motor of not more than .5 brake horsepower capable of developing a speed of not more than eight miles per hour:

(i) on the sidewalk; and

(ii) in all places where pedestrians are allowed.

(b) A permit, license, registration, authority, application, or restriction may not be required or imposed on a person with a physical disability who operates a pedestrian vehicle under this Subsection (3).

(c) The provisions of this Subsection (3) supercede the provision of Subsection (2)[~~(b)~~].

Section 33. Section **41-6a-1620** is amended to read:

41-6a-1620. Departmental approval of lighting devices or safety equipment.

(1) (a) The department shall approve or disapprove any lighting device or other safety equipment, component or assembly of a type for which approval is specifically required under

this part.

(b) The department shall consider the part for approval within a reasonable time after approval has been requested.

(2) (a) The department shall establish a procedure for the submission, review, approval, disapproval, issuance of an approval certificate, and the expiration or renewal of approval for any part under Subsection (1).

(b) (i) The procedure may provide for submission of the part to the American Association of Motor Vehicle Administrators as the agent of the department.

(ii) Approval issued by the association under Subsection [~~(1)~~] (2)(b)(i) shall have the same force and effect as if it has been issued by the department.

(c) The department shall maintain and publish lists of all parts, devices, components, or assemblies which have been approved by the department.

(d) A part approved under this section is valid unless revoked under Section 41-6a-1621 or unless the department requires it to be renewed under rules made under Section 41-6a-1601.

Section 34. Section **41-6a-1642** is amended to read:

41-6a-1642. Emissions inspection -- County program.

(1) The legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard shall require:

(a) a certificate of emissions inspection, a waiver, or other evidence the motor vehicle is exempt from emissions inspection and maintenance program requirements be presented:

(i) as a condition of registration or renewal of registration; and

(ii) at other times as the county legislative body may require to enforce inspection requirements for individual motor vehicles, except that the county legislative body may not routinely require a certificate of emission inspection, or waiver of the certificate, more often than required under Subsection (6); and

(b) compliance with this section for a motor vehicle registered or principally operated in the county and owned by or being used by a department, division, instrumentality, agency, or employee of:

(i) the federal government;

(ii) the state and any of its agencies; or

(iii) a political subdivision of the state, including school districts.

(2) (a) The legislative body of a county identified in Subsection (1), in consultation with the Air Quality Board created under Section 19-1-106, shall make regulations or ordinances regarding:

(i) emissions standards;

(ii) test procedures;

(iii) inspections stations;

(iv) repair requirements and dollar limits for correction of deficiencies; and

(v) certificates of emissions inspections.

(b) The regulations or ordinances shall:

(i) be made to attain or maintain ambient air quality standards in the county, consistent with the state implementation plan and federal requirements;

(ii) may allow for a phase-in of the program by geographical area; and

(iii) be compliant with the analyzer design and certification requirements contained in the state implementation plan prepared under Title 19, Chapter 2, Air Conservation Act.

(c) The county legislative body and the Air Quality Board shall give preference to an inspection and maintenance program that is:

(i) decentralized, to the extent the decentralized program will attain and maintain ambient air quality standards and meet federal requirements;

(ii) the most cost effective means to achieve and maintain the maximum benefit with regard to ambient air quality standards and to meet federal air quality requirements as related to vehicle emissions; and

(iii) providing a reasonable phase-out period for replacement of air pollution emission testing equipment made obsolete by the program.

(d) The provisions of Subsection (2)(c)(iii) apply only to the extent the phase-out:

(i) may be accomplished in accordance with applicable federal requirements; and

(ii) does not otherwise interfere with the attainment and maintenance of ambient air quality standards.

(3) The following vehicles are exempt from the provisions of this section:

(a) an implement of husbandry;

(b) a motor vehicle that:

(i) meets the definition of a farm truck under Section 41-1a-102; and

(ii) has a gross vehicle weight rating of 12,001 pounds or more;

(c) a vintage vehicle as defined in Section 41-21-1;

(d) a custom vehicle as defined in Section 41-6a-1507; and

(e) to the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401, et seq., a motor vehicle that is less than two years old on January 1 based on the age of the vehicle as determined by the model year identified by the manufacturer.

(4) (a) The legislative body of a county identified in Subsection (1) shall exempt a pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or less from the emission inspection requirements of this section, if the registered owner of the pickup truck provides a signed statement to the legislative body stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as land in agricultural use under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, floricultural and horticultural products; and

(B) in the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits a signed statement under this section a certificate of exemption from emission inspection requirements for purposes of registering the exempt vehicle.

(5) (a) Subject to Subsection (5)(c), the legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard may require each college or university located in a county subject to this section to require its students and employees who park a motor vehicle not registered in a county subject to this section to provide proof of compliance with an emissions inspection accepted by the county legislative body if the motor vehicle is parked on the college

or university campus or property.

(b) College or university parking areas that are metered or for which payment is required per use are not subject to the requirements of this Subsection (5).

(c) The legislative body of a county shall make the reasons for implementing the provisions of this Subsection (5) part of the record at the time that the county legislative body takes its official action to implement the provisions of this Subsection (5).

(6) (a) An emissions inspection station shall issue a certificate of emissions inspection for each motor vehicle that meets the inspection and maintenance program requirements established in rules made under Subsection (2).

(b) The frequency of the emissions inspection shall be determined based on the age of the vehicle as determined by model year and shall be required annually subject to the provisions of Subsection (6)(c).

(c) (i) To the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401 et seq., the legislative body of a county identified in Subsection (1) shall only require the emissions inspection every two years for each vehicle.

(ii) The provisions of Subsection (6)(c)(i) apply only to a vehicle that is less than six years old on January 1.

(iii) For a county required to implement a new vehicle emissions inspection and maintenance program on or after December 1, 2012, under Subsection (1), but for which no current federally approved state implementation plan exists, a vehicle shall be tested at a frequency determined by the county legislative body, in consultation with the Air Quality Board created under Section 19-1-106, that is necessary to comply with federal law or attain or maintain any national ambient air quality standard.

(iv) If a county legislative body establishes or changes the frequency of a vehicle emissions inspection and maintenance program under Subsection [~~(5)~~] (6)(c)(iii), the establishment or change shall take effect on January 1 if the Tax Commission receives notice meeting the requirements of Subsection [~~(5)~~] (6)(c)(v) from the county prior to October 1.

(v) The notice described in Subsection [~~(5)~~] (6)(c)(iv) shall:

(A) state that the county will establish or change the frequency of the vehicle emissions inspection and maintenance program under this section;

(B) include a copy of the ordinance establishing or changing the frequency; and

(C) if the county establishes or changes the frequency under this section, state how frequently the emissions testing will be required.

(d) If an emissions inspection is only required every two years for a vehicle under Subsection (6)(c), the inspection shall be required for the vehicle in:

(i) odd-numbered years for vehicles with odd-numbered model years; or

(ii) in even-numbered years for vehicles with even-numbered model years.

(7) The emissions inspection shall be required within the same time limit applicable to a safety inspection under Section 41-1a-205.

(8) (a) A county identified in Subsection (1) shall collect information about and monitor the program.

(b) A county identified in Subsection (1) shall supply this information to an appropriate legislative committee, as designated by the Legislative Management Committee, at times determined by the designated committee to identify program needs, including funding needs.

(9) If approved by the county legislative body, a county that had an established emissions inspection fee as of January 1, 2002, may increase the established fee that an emissions inspection station may charge by $2.50 for each year that is exempted from emissions inspections under Subsection (6)(c) up to a $7.50 increase.

(10) (a) A county identified in Subsection (1) may impose a local emissions compliance fee on each motor vehicle registration within the county in accordance with the procedures and requirements of Section 41-1a-1223.

(b) A county that imposes a local emissions compliance fee shall use revenues generated from the fee for the establishment and enforcement of an emissions inspection and maintenance program in accordance with the requirements of this section.

Section 35. Section **47-3-102** is amended to read:

47-3-102. Definitions.

As used in this chapter:

(1) "Air gun" means a .177 or .20 caliber, or equivalent 4.5mm or 5.0mm, pellet rifle or pellet pistol whose projectile is pneumatically propelled by compressed air or compressed gas such as carbon dioxide.

(2) "Certified official" means a Range Safety Officer, Firearms Instructor, or Shooting

Coach certified by the National Rifle Association or equivalent national shooting organization.

(3) "Group" means any organized club, organization, corporation or association which at the time of use of the shooting range has a certified official in charge while shooting is taking place and while the range is open.

(4) "Military range" means a shooting range located on a state military installation.

(5) "Nonmilitary range" means a shooting range that is not a military range.

(6) "Political subdivision" has the same meaning as defined in Section [~~17B-2-101~~] 17B-1-102 and includes a school district.

(7) "Public funds" means funds provided by the federal government, the state, or a political subdivision of the state.

(8) "Shooting range" or "range" means an area designed and continuously operated under nationally recognized standards and operating practices for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, archery, or any other similar shooting activities.

Section 36. Section **48-1-32** is amended to read:

48-1-32. Power of partner to bind partnership to third persons after dissolution.

(1) After dissolution a partner can bind the partnership, except as provided in [~~paragraph~~] Subsection (3):

(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution[~~.~~]; or

(b) by any transaction which would bind the partnership, if dissolution had not taken place, provided the other party to the transaction:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(ii) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place[~~,~~], or in each place, if more than one[~~,~~], at which the partnership business was regularly carried on.

(2) The liability of a partner under [~~paragraph~~] Subsection (1)(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of

the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; [~~or~~]

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(ii) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in [~~paragraph~~] Subsection (1)(b)(ii).

(4) Nothing in this section shall affect the liability under Section 48-1-13 of any person who after dissolution represents himself or consents to another's representing him as a partner in a partnership engaged in carrying on business.

Section 37. Section **48-1-35** is amended to read:

48-1-35. Rights of partners to application of partnership property.

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities either by payment or agreement under [~~Section~~] Subsection 48-1-33(2), [~~he~~] the expelled partner shall receive in cash only the net amount due [~~him~~] to the expelled partner from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(i) all the rights specified in [~~paragraph~~] Subsection (1) [~~of this section~~]; and

(ii) the right as against each partner who has caused the dissolution wrongfully to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so during the agreed term for the partnership, and for that purpose may possess the partnership property; provided, they pay to any partner who has caused the dissolution wrongfully the value of his interest in the partnership at the dissolution, less any damages recoverable under [~~clause~~] Subsection (2)(a)(ii) [~~of this section~~] or secure the payment by bond approved by the court, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(i) If the business is not continued under the provisions of [~~paragraph~~] Subsection (2)(b), all the rights of a partner under [~~paragraph~~] Subsection (1), subject to [~~clause~~] Subsection (2)(a)(ii) [~~of this section~~].

(ii) If the business is continued under [~~paragraph~~] Subsection (2)(b) [~~of this section~~], the right as against his copartners, and all claiming through them, in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered.

Section 38. Section **48-1-38** is amended to read:

48-1-38. Liability of persons continuing the business in certain cases.

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representatives of a deceased partner assign) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first, or dissolved, partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representatives of a deceased partner assign) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs either alone or with others, creditors of the

dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued, as set forth in [~~paragraphs~~] Subsections (1) and (2) [~~of this section~~], with the consent of the retired partner or the representatives of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of [~~Section~~] Subsection 48-1-35(2)(b), either alone or with others and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business, either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representatives of the deceased partner, have a prior right to any claim of the retired partner or the representatives of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership, or on account of any consideration promised for such interest, or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership

name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

Section 39. Section **49-11-801** is amended to read:

49-11-801. Defined contribution plans authorized -- Subject to federal and state laws -- Rules to implement this provision -- Costs of administration -- Limitations on eligibility -- Protection of tax status.

(1) (a) The board shall establish and administer defined contribution plans established under the Internal Revenue Code.

(b) Voluntary deferrals and nonelective contributions shall be permitted according to the provisions of these plans as established by the board.

(c) Except as provided in Subsections [~~49-22-302~~] 49-22-303(2)(a), 49-22-401(3)(a), 49-23-302(2)(a), and 49-23-401(3)(a), the defined contribution account balance is vested in the participant.

(2) (a) Voluntary deferrals and nonelective contributions shall be posted to the participant's account.

(b) Except as provided in Subsections 49-22-303(3), 49-22-401(4), 49-23-302(3), and 49-23-401(4), participants may direct the investment of their account in the investment options established by the board and in accordance with federal and state law.

(3) (a) The board may make rules and create plan documents to implement and administer this section.

(b) The board may adopt rules under which a participant may put money into a defined contribution plan as permitted by federal law.

(c) The office may reject any payments if the office determines the tax status of the systems, plans, or programs would be jeopardized by allowing the payment.

(d) Costs of administration shall be paid as established by the board.

(4) Voluntary deferrals and nonelective contributions may be invested separately or in conjunction with the Utah State Retirement Investment Fund.

(5) The board or office may take actions necessary to protect the tax qualified status of the systems, plans, and programs under its control, including the movement of individuals from defined contribution plans to defined benefit systems or the creation of excess benefit plans authorized by federal law.

(6) The office may, at its sole discretion, correct errors made in the administration of its defined contribution plans.

Section 40. Section **49-20-411** is amended to read:

49-20-411. Autism Spectrum Disorder Treatment Program.

(1) As used in this section:

(a) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior that are:

(i) necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and

(ii) provided or supervised by a board certified behavior analyst or a licensed psychologist with equivalent university training and supervised experience.

(b) "Autism spectrum disorder" is as defined by the most recent edition of the Diagnostic and Statistical Manual on Mental Disorders or a recent edition of a professionally accepted diagnostic manual.

(c) "Health plan" does not include the health plan offered by the Public Employees' Benefit and Insurance Program that is the state's designated essential health benefit package for purposes of the PPACA, as defined in Section [~~31A-1-401~~] 31A-1-301.

(d) "Parent" means a parent of a qualified child.

(e) "Program" means the autism spectrum disorder treatment program created in Subsection (2).

(f) "Qualified child" means a child who is:

(i) at least two years of age but less than seven years of age;

(ii) diagnosed with an autism spectrum disorder by a qualified professional; and

(iii) the eligible dependent of a state employee who is enrolled in a health plan that is offered under this chapter.

(g) "Treatment" means any treatment generally accepted by the medical community or the American Academy of Pediatrics as an effective treatment for an individual with an autism spectrum disorder, including applied behavior analysis.

(2) The Public Employees' Benefit and Insurance Program shall offer a program for the treatment of autism spectrum disorders in accordance with Subsection (3).

(3) The program shall offer qualified children:

(a) diagnosis of autism spectrum disorder by a physician or qualified mental health professional, and the development of a treatment plan;

(b) applied behavior analysis provided by a certified behavior analyst or someone with equivalent training; and

(c) an annual cost-shared maximum benefit of $30,000 toward the cost of treatment that the program covers, where, for each qualified child, for the cost of the treatment:

(i) the parent pays the first $250;

(ii) after the first $250, the program pays 80% and the parent pays 20%;

(iii) the program pays no more than $150 per day; and

(iv) the program pays no more than $24,000 total.

(4) The purpose of the program is to study the efficacy of providing autism treatment and is not a mandate for coverage of autism treatment within the health plans offered by the Public Employees' Benefit and Insurance Program.

(5) The program shall be funded on an ongoing basis through the risk pool established in Subsection 49-20-202(1)(a).

Section 41. Section **51-8-301** is amended to read:

51-8-301. Appropriation for expenditure or accumulation of endowment fund.

(1) (a) Subject to the intent of a donor expressed in a gift instrument and to Subsection [~~(4)~~] (3), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines to be prudent for the uses, benefits, purposes, and duration for which the endowment fund is established.

(b) Unless stated otherwise in a gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution.

(c) In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(i) the duration and preservation of the endowment fund;

(ii) the purposes of the institution and the endowment fund;

(iii) general economic conditions;

(iv) the possible effect of inflation or deflation;

(v) the expected total return from income and the appreciation of investments;

(vi) other resources of the institution; and

(vii) the investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under Subsection (1), a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or similar words:

(a) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) do not otherwise limit the authority to appropriate for expenditure or accumulate under Subsection (1).

Section 42. Section **53-2a-105** is amended to read:

53-2a-105. Emergency Management Administration Council created -- Function -- Composition -- Expenses.

(1) There is created the Emergency Management Administration Council to provide advice and coordination for state and local government agencies on government emergency prevention, mitigation, preparedness, response, and recovery actions and activities.

(2) The council shall meet at the call of the chair, but at least semiannually.

(3) The council shall be made up of the:

(a) lieutenant governor, or the lieutenant governor's designee;

(b) attorney general, or the attorney general's designee;

(c) heads of the following state agencies, or their designees:

(i) Department of Public Safety;

(ii) Division of Emergency Management;

(iii) Department of Transportation;

(iv) Department of Health;

(v) Department of Environmental Quality;

(vi) Department of [~~Community and Economic Development~~] Workforce Services; and

(vii) Department of Natural Resources;

(d) adjutant general of the National Guard or the adjutant general's designee;

(e) commissioner of agriculture and food or the commissioner's designee;

(f) two representatives with expertise in emergency management appointed by the Utah League of Cities and Towns;

(g) two representatives with expertise in emergency management appointed by the Utah Association of Counties;

(h) up to four additional members with expertise in emergency management, critical infrastructure, or key resources as these terms are defined under 6 U.S. Code Section 101 appointed from the private sector, by the chair of the council; and

(i) two representatives appointed by the Utah Emergency Management Association.

(4) The commissioner and the lieutenant governor serve as cochairs of the council.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

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

(6) The council shall coordinate with existing emergency management related entities including:

(a) the Emergency Management Regional Committees established by the Department of Public Safety;

(b) the Statewide Mutual Aid Committee established under Section 53-2a-303; and

(c) the Hazardous Chemical Emergency Response Commission designated under Section 53-2a-703.

(7) The council may establish other committees and task forces as determined necessary by the council to carry out the duties of the council.

Section 43. Section **53-2a-202** is amended to read:

53-2a-202. Legislative findings -- Purpose.

(1) The Legislature finds that existing and increasing threats of the occurrence of destructive disasters resulting from attack, internal disturbance, natural phenomenon or

technological hazard could greatly affect the health, safety, and welfare of the people of this state, and it is therefore necessary to grant to the governor of this state and its political subdivisions special emergency disaster authority.

(2) It is the purpose of this act to assist the governor of this state and its political subdivisions to effectively provide emergency disaster response and recovery assistance in order to protect the lives and property of the people. [~~This part is known as the "Disaster Response and Recovery Act."~~]

Section 44. Section **53-2a-204** is amended to read:

53-2a-204. Authority of governor -- Federal assistance -- Fraud or willful misstatement in application for financial assistance -- Penalty.

(1) In addition to any other authorities conferred upon the governor, if the governor issues an executive order declaring a state of emergency, the governor may:

(a) utilize all available resources of state government as reasonably necessary to cope with a state of emergency;

(b) employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with the provisions of this part and with orders, rules, and regulations made pursuant to this [~~act~~] part;

(c) recommend and advise the evacuation of all or part of the population from any stricken or threatened area within the state if necessary for the preservation of life;

(d) recommend routes, modes of transportation, and destination in connection with evacuation;

(e) in connection with evacuation, suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not to include the lawful bearing of arms;

(f) control ingress and egress to and from a disaster area, the movement of persons within the area, and recommend the occupancy or evacuation of premises in a disaster area;

(g) clear or remove from publicly or privately owned land or water debris or wreckage that is an immediate threat to public health, public safety, or private property, including allowing an employee of a state department or agency designated by the governor to enter upon private land or waters and perform any tasks necessary for the removal or clearance operation if the political subdivision, corporation, organization, or individual that is affected by the removal

of the debris or wreckage:

(i) presents an unconditional authorization for removal of the debris or wreckage from private property; and

(ii) agrees to indemnify the state against any claim arising from the removal of the debris or wreckage;

(h) enter into agreement with any agency of the United States:

(i) for temporary housing units to be occupied by victims of a state of emergency or persons who assist victims of a state of emergency; and

(ii) to make the housing units described in Subsection (1)(h)(i) available to a political subdivision of this state;

(i) assist any political subdivision of this state to acquire sites and utilities necessary for temporary housing units described in Subsection (1)(h)(i) by passing through any funds made available to the governor by an agency of the United States for this purpose;

(j) subject to Sections 53-2a-209 and 53-2a-214, temporarily suspend or modify by executive order, during the state of emergency, any public health, safety, zoning, transportation, or other requirement of a statute or administrative rule within this state if such action is essential to provide temporary housing described in Subsection (1)(h)(i);

(k) upon determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues because of a state of emergency and the political subdivision so affected has demonstrated a need for financial assistance to perform its governmental functions, in accordance with Utah Constitution, Article XIV, Sections 3 and 4, and Section 10-8-6:

(i) apply to the federal government for a loan on behalf of the political subdivision if the amount of the loan that the governor applies for does not exceed 25% of the annual operating budget of the political subdivision for the fiscal year in which the state of emergency occurs; and

(ii) receive and disburse the amount of the loan to the political subdivision;

(l) accept funds from the federal government and make grants to any political subdivision for the purpose of removing debris or wreckage from publicly owned land or water;

(m) upon determination that financial assistance is essential to meet expenses related to

a state of emergency of individuals or families adversely affected by the state of emergency that cannot be sufficiently met from other means of assistance, apply for, accept, and expend a grant by the federal government to fund the financial assistance, subject to the terms and conditions imposed upon the grant;

(n) recommend to the Legislature other actions the governor considers to be necessary to address a state of emergency; or

(o) authorize the use of all water sources as necessary for fire suppression.

(2) A person who fraudulently or willfully makes a misstatement of fact in connection with an application for financial assistance under this section shall, upon conviction of each offense, be subject to a fine of not more than $5,000 or imprisonment for not more than one year, or both.

Section 45. Section **53-2a-1104** is amended to read:

53-2a-1104. General duties of the Search and Rescue Advisory Board.

The duties of the Search and Rescue Advisory Board shall include:

(1) conducting a board meeting at least once per quarter;

(2) receiving applications for reimbursement of eligible expenses from county search and rescue operations by the end of the first quarter of each calendar year;

(3) determining the reimbursement to be provided from the Search and Rescue Financial Assistance Program to each applicant;

(4) standardizing the format and maintaining key search and rescue statistical data from each county within the state; and

(5) disbursing funds accrued in the Search and Rescue Financial Assistance Program, created under Section [~~53-2-107~~] 53-2a-1102, to eligible applicants.

Section 46. Section **53-5a-104** is amended to read:

53-5a-104. Firearm transfer certification.

(1) As used in this section:

(a) "Certification" means the participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm.

(b) "Chief law enforcement officer" means any official the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any successor agency, identifies by regulation or

otherwise as eligible to provide any required certification for the making or transfer of a firearm.

(c) "Firearm" has the same meaning as provided in the National Firearms Act, [~~6~~] 26 U.S.C. Sec. 5845(a).

(2) A chief law enforcement officer may not make a certification under this section that the chief law enforcement officer knows to be untrue. The chief law enforcement officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm, the possession of which is not prohibited by law.

(3) Upon receiving a federal firearm transfer form a chief law enforcement officer or the chief law enforcement officer's designee shall provide certification if the applicant:

(a) is not prohibited by law from receiving or possessing the firearm; or

(b) is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing the firearm.

(4) The chief law enforcement officer, the chief law enforcement officer's designee, or official signing the federal transfer form shall:

(a) return the federal transfer form to the applicant within 15 calendar days; or

(b) if the applicant is denied, provide to the applicant the reasons for denial in writing within 15 calendar days.

(5) Chief law enforcement officers and their employees who act in good faith when acting within the scope of their duties are immune from liability arising from any act or omission in making a certification as required by this section. Any action taken against a chief law enforcement officer or an employee shall be in accordance with Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Section 47. Section **53-5c-201** is amended to read:

53-5c-201. Voluntary commitment of a firearm by owner cohabitant -- Law enforcement to hold firearm.

(1) (a) An owner cohabitant may voluntarily commit a firearm to a law enforcement agency for safekeeping if the owner cohabitant believes that another cohabitant is an immediate threat to:

(i) himself or herself;

(ii) the owner cohabitant; or

(iii) any other person.

(b) A law enforcement agency may not hold a firearm under this section if the law enforcement agency obtains the firearm in a manner other than the owner cohabitant voluntarily presenting, of his or her own free will, the firearm to the law enforcement agency at the agency's office.

(2) Unless a firearm is an illegal firearm subject to Section 53-5c-202, a law enforcement agency that receives a firearm in accordance with this chapter shall:

(a) record:

(i) the owner cohabitant's name, address, and phone number;

(ii) the firearm serial number; and

(iii) the date that the firearm was voluntarily committed;

(b) require the owner cohabitant to sign a document attesting that the owner cohabitant has an ownership interest in the firearm;

(c) hold the firearm in safe custody for 60 days after the day on which it is voluntarily committed; and

(d) upon proof of identification, return the firearm to:

(i) the owner cohabitant after the expiration of the 60-day period or, if the owner cohabitant requests return of the firearm before the expiration of the 60-day period, at the time of the request; or

(ii) to an owner other than the owner cohabitant in accordance with Section 53-5c-202.

(3) The law enforcement agency shall hold the firearm for an additional 60 days:

(a) if the initial 60-day period expires; and

(b) the owner cohabitant requests that the law enforcement agency hold the firearm for an additional 60 days.

(4) A law enforcement agency may not request or require that the owner cohabitant provide the name or other information of the cohabitant who poses an immediate threat or any other cohabitant.

(5) Notwithstanding an ordinance or policy to the contrary adopted in accordance with Section 63G-2-701, a law enforcement agency shall destroy a record created under Subsection (2), Subsection 53-5c-202(4)(b)(iii), or any other record created in the application of this

chapter no later than five days after:

(a) returning a firearm in accordance with Subsection (2)(d); or

(b) appropriating, selling, or destroying the firearm in accordance with Section 53-5c-202.

(6) Unless otherwise provided, the provisions of Title 77, Chapter [~~24, Disposal of Property Received by Peace Officer~~] 24a, Lost or Mislaid Personal Property, do not apply to a firearm received by a law enforcement agency in accordance with this chapter.

(7) A law enforcement agency shall adopt a policy for the safekeeping of a firearm held in accordance with this chapter.

Section 48. Section **53A-1-603** is amended to read:

53A-1-603. Duties of State Board of Education.

(1) The State Board of Education shall:

(a) require each school district and charter school to implement the Utah Performance Assessment System for Students, hereafter referred to as U-PASS;

(b) require the state superintendent of public instruction to submit and recommend criterion-referenced achievement tests or online computer adaptive tests, college readiness assessments, an online writing assessment for grades 5 and 8, and a test for students in grade 3 to measure reading grade level to the board for approval and adoption and distribution to each school district and charter school by the state superintendent;

(c) develop an assessment method to uniformly measure statewide performance, school district performance, and school performance of students in grades 3 through 12 in mastering basic skills courses; and

(d) provide for the state to participate in the National Assessment of Educational Progress state-by-state comparison testing program.

(2) Except as provided in Subsection (3) and Subsection 53A-1-611(3), under U-PASS, the State Board of Education shall annually require each school district and charter school, as applicable, to administer:

(a) as determined by the State Board of Education, statewide criterion-referenced tests or online computer adaptive tests in grades 3 through 12 and courses in basic skill areas of the core curriculum;

(b) an online writing assessment to all students in grades 5 and 8;

(c) college readiness assessments as detailed in Section 53A-1-611; and

(d) a test to all students in grade 3 to measure reading grade level.

(3) Beginning with the 2014-15 school year, the State Board of Education shall annually require each school district and charter school, as applicable, to administer a computer adaptive assessment system that is:

(a) adopted by the State Board of Education; and

(b) aligned to Utah's common core.

(4) The board shall adopt rules for the conduct and administration of U-PASS to include the following:

(a) the computation of student performance based on information that is disaggregated with respect to race, ethnicity, gender, limited English proficiency, and those students who qualify for free or reduced price school lunch;

(b) security features to maintain the integrity of the system, which could include statewide uniform testing dates, multiple test forms, and test administration protocols;

(c) the exemption of student test scores, by exemption category, such as limited English proficiency, mobility, and students with disabilities, with the percent or number of student test scores exempted being publically reported at a district level;

(d) compiling of criterion-referenced, online computer adaptive, and online writing test scores and test score averages at the classroom level to allow for:

(i) an annual review of those scores by parents of students and professional and other appropriate staff at the classroom level at the earliest point in time;

(ii) the assessment of year-to-year student progress in specific classes, courses, and subjects; and

(iii) a teacher to review, prior to the beginning of a new school year, test scores from the previous school year of students who have been assigned to the teacher's class for the new school year;

(e) allowing a school district or charter school to have its tests administered and scored electronically to accelerate the review of test scores and their usefulness to parents and educators under Subsection (4)(d), without violating the integrity of U-PASS; and

(f) providing that scores on the tests and assessments required under Subsection (2)(a) and Subsection (3) shall be considered in determining a student's academic grade for the

appropriate course and whether a student shall advance to the next grade level.

(5) (a) A school district or charter school, as applicable, is encouraged to administer an online writing assessment to students in grade 11.

(b) The State Board of Education may award a grant to a school district or charter school to pay for an online writing assessment and instruction program that may be used to assess the writing of students in grade 11.

(6) The State Board of Education shall make rules:

(a) establishing procedures for applying for and awarding money for computer adaptive tests;

(b) specifying how money for computer adaptive tests shall be allocated among school districts and charter schools that qualify to receive the money; and

(c) requiring reporting of the expenditure of money awarded for computer adaptive testing and evidence that the money was used to implement computer adaptive testing.

(7) The State Board of Education shall assure that computer adaptive tests are administered in compliance with the requirements of Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act.

(8) (a) The State Board of Education shall establish a committee consisting of 15 parents of Utah public education students to review all computer adaptive test questions.

(b) The committee established in Subsection (8)(a) shall include the following parent members:

(i) five members appointed by the chair of the State Board of Education;

(ii) five members appointed by the speaker of the House of Representatives; and

(iii) five members appointed by the president of the Senate.

(c) The State Board of Education shall provide staff support to the parent committee.

(d) The term of office of each member appointed in Subsection (8)(b) is four years.

(e) The chair of the State Board of Education, the speaker of the House of Representatives, and the president of the Senate shall adjust the length of terms to stagger the terms of committee members so that approximately 1/2 of the committee members are appointed every two years.

(f) No member may receive compensation or benefits for the member's service on the committee.

(9) (a) School districts and charter schools shall require each licensed employee to complete two hours of professional development on youth suicide prevention within their license cycle in accordance with Section 53A-6-104.

(b) The State Board of Education shall develop or adopt sample materials to be used by a school district or charter school for professional development training on youth suicide prevention.

(c) The training required by this Subsection (9) shall be incorporated into professional development training required by rule in accordance with Section 53A-6-104.

Section 49. Section **53A-1-1104** is amended to read:

53A-1-1104. Schools included in grading system.

(1) Except as provided in Subsections (2) through (5), a school that has students who take statewide assessments shall receive a school grade.

(2) A school may not receive a school grade, if the number of a school's students tested is less than the minimum sample size necessary, based on accepted professional practice for statistical reliability or the prevention of the unlawful release of personally identifiable student data under 20 U.S.C. Sec. 1232h.

(3) (a) An alternative school is exempt from school grading.

(b) The board shall annually:

(i) evaluate an alternative school in accordance with an accountability plan approved by the board; and

(ii) report the results on a school report card.

(c) The State Board of Education, a local school board, and a charter school governing board shall provide to a parent or guardian a school report card for an alternative school and electronically publish the school report card in the same manner and at the same time as other school report cards are provided and published pursuant to Section [~~53A-11-1112~~] 53A-1-1112.

(4) The State Board of Education shall exempt a school from school grading in the school's first year of operations if the school's local school board or charter school governing board requests the exemption.

(5) The State Board of Education shall exempt a high school from school grading or exempt a combination school from the school grading requirement described in Subsection

53A-1-1104.5(2) in the high school's or combination school's second year of operations if the school's local school board or charter school governing board requests the exemption.

Section 50. Section **53A-1a-508** is amended to read:

53A-1a-508. Charter agreement -- Content -- Modification.

(1) A charter agreement:

(a) is a contract between the charter school applicant and the charter school authorizer;

(b) shall describe the rights and responsibilities of each party; and

(c) shall allow for the operation of the applicant's proposed charter school.

(2) A charter agreement shall include:

(a) the name of:

(i) the charter school; and

(ii) the charter school applicant;

(b) the mission statement and purpose of the charter school;

(c) the charter school's opening date;

(d) the grade levels and number of students the charter school will serve;

(e) a description of the structure of the charter school's governing board, including:

(i) the number of board members;

(ii) how members of the board are appointed; and

(iii) board members' terms of office;

(f) assurances that:

(i) the governing board shall comply with:

(A) the charter school's bylaws;

(B) the charter school's articles of incorporation; and

(C) applicable federal law, state law, and State Board of Education rules;

(ii) the governing board will meet all reporting requirements described in Section [~~53A-1b-115~~] 53A-1a-507; and

(iii) except as provided in Title 53A, Chapter 20b, Part 2, Charter School Credit Enhancement Program, neither the authorizer nor the state, including an agency of the state, is liable for the debts or financial obligations of the charter school or a person who operates the charter school;

(g) which administrative rules the State Board of Education will waive for the charter

school;

(h) minimum financial standards for operating the charter school;

(i) minimum standards for student achievement; and

(j) signatures of the charter school authorizer and the charter school's governing board members.

(3) A charter agreement may not be modified except by mutual agreement between the charter school authorizer and the governing board of the charter school.

Section 51. Section **53A-1a-601** is amended to read:

53A-1a-601. Job enhancements for mathematics, science, technology, and special education training.

(1) As used in this part, "special education teacher" includes occupational therapist.

(2) The Public Education Job Enhancement Program is established to attract, train, and retain highly qualified:

(a) secondary teachers with expertise in mathematics, physics, chemistry, physical science, learning technology, or information technology;

(b) special education teachers; and

(c) teachers in grades four through six with mathematics endorsements.

(3) The program shall provide for the following:

(a) application by a school district superintendent or the principal of a school on behalf of a qualified teacher;

(b) an award of up to $20,000 or a scholarship to cover the tuition costs for a master's degree, an endorsement, or graduate education in the areas identified in Subsection (2) to be given to selected public school teachers on a competitive basis:

(i) whose applications are approved [~~under Subsection 53A-1a-602(4)~~]; and

(ii) who teach in the state's public education system for four years in the areas identified in Subsection (2);

(c) (i) as to the cash awards under Subsection (3)(b), payment of the award in two installments, with an initial payment of up to $10,000 at the beginning of the term and up to $10,000 at the conclusion of the term;

(ii) repayment of a portion of the initial payment by the teacher if the teacher fails to complete two years of the four-year teaching term in the areas identified in Subsection (2) as

provided by rule of the State Board of Education in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, unless waived for good cause by the State Board of Education; and

(iii) nonpayment of the second installment if the teacher fails to complete the four-year teaching term; and

(d) (i) as to the scholarships awarded under Subsection (3)(b), provision for the providing institution to certify adequate performance in obtaining the master's degree, endorsement, or graduate education in order for the teacher to maintain the scholarship; and

(ii) repayment by the teacher of a prorated portion of the scholarship, if the teacher fails to complete the authorized classes or program or to teach in the state system of public education in the areas identified in Subsection (2) for four years after obtaining the master's degree, the endorsement, or graduate education.

(4) An individual teaching in the public schools under a letter of authorization may participate in the cash award program if:

(a) the individual has taught under the letter of authorization for at least one year in the areas referred to in Subsection (2); and

(b) the application made under Subsection (3)(a) is based in large part upon the individual receiving a superior evaluation as a classroom teacher.

(5) (a) The program may provide for the expenditure of up to $1,000,000 of available money, if at least an equal amount of matching money becomes available, to provide professional development training to superintendents, administrators, and principals in the effective use of technology in public schools.

(b) An award granted under this Subsection (5) shall be made in accordance with criteria developed and adopted by the State Board of Education and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) An amount up to $120,000 of the $1,000,000 authorized in Subsection (5)(a) may be expended, regardless of the matching money being available.

Section 52. Section **53A-12-102** is amended to read:

53A-12-102. State policy on student fees, deposits, or other charges.

(1) For purposes of this part:

(a) "Board" means the State Board of Education.

(b) "Secondary school" means a school that provides instruction to students in grades 7, 8, 9, 10, 11, or 12.

(c) "Secondary school student":

(i) means a student enrolled in a secondary school; and

(ii) includes a student in grade 6 if the student attends a secondary school.

(2) (a) A secondary school may impose fees [~~to~~] on secondary school students.

(b) The board shall adopt rules regarding the imposition of fees in secondary schools in accordance with the requirements of this part.

(3) A fee, deposit, or other charge may not be made, or any expenditure required of a student or the student's parent or guardian, as a condition for student participation in an activity, class, or program provided, sponsored, or supported by or through a public school or school district, unless authorized by the local school board or charter school governing board under rules adopted by the board.

(4) (a) A fee, deposit, charge, or expenditure may not be required for elementary school activities which are part of the regular school day or for supplies used during the regular school day.

(b) An elementary school or elementary school teacher may compile and provide to a student's parent or guardian a suggested list of supplies for use during the regular school day so that a parent or guardian may furnish on a voluntary basis those supplies for student use.

(c) A list provided to a student's parent or guardian pursuant to Subsection (4)(b) shall include and be preceded by the following language:

"NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS, OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

Section 53. Section **53A-15-603** is amended to read:

53A-15-603. Gang prevention and intervention policies.

(1) (a) The State Board of Education shall adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction.

(b) The rules described in Subsection (1)(a) shall provide that the gang prevention and intervention policies of a local school board or charter school governing board may include

provisions that reflect the individual school district's or charter school's unique needs or circumstances.

(2) The rules described in Subsection (1) may include the following provisions:

(a) school faculty and personnel shall report suspected gang activities relating to the school and its students to a school administrator and law enforcement;

(b) a student who participates in gang activities may be excluded from participation in extracurricular activities, including interscholastic athletics, as determined by the school administration after consultation with law enforcement;

(c) gang-related graffiti or damage to school property shall result in parent or guardian notification and appropriate administrative and law enforcement actions, which may include obtaining restitution from those responsible for the damage;

(d) if a serious gang-related incident, as determined by the school administrator in consultation with local law enforcement, occurs on school property, at school related activities, or on a site that is normally considered to be under school control, notification shall be provided to parents and guardians of students in the school:

(i) informing them, in general terms, about the incident, but removing all personally identifiable information about students from the notice;

(ii) emphasizing the school's concern for safety; and

(iii) outlining the action taken at the school regarding the incident;

(e) school faculty and personnel shall be trained by experienced evidence based trainers that may include community gang specialists and law enforcement as part of comprehensive strategies to recognize early warning signs for youth in trouble and help students resist serious involvement in undesirable activity, including joining gangs or mimicking gang behavior;

(f) prohibitions on the following behavior:

(i) advocating or promoting a gang or any gang-related activities;

(ii) marking school property, books, or school work with gang names, slogans, or signs;

(iii) conducting gang initiations;

(iv) threatening another person with bodily injury or inflicting bodily injury on another in connection with a gang or gang-related activity;

(v) aiding or abetting an activity described under Subsections [~~(1)~~] (2)(f)(i) through (iv)

by a person's presence or support;

(vi) displaying or wearing common gang apparel, common dress, or identifying signs or symbols on one's clothing, person, or personal property that is disruptive to the school environment; and

(vii) communicating in any method, including verbal, non-verbal, and electronic means, designed to convey gang membership or affiliation.

(3) The rules described in Subsection (1) may require a local school board or governing board of a charter school to publicize the policies enacted by the local school board or governing board of a charter school in accordance with the rules described in Subsection (1) to all students, parents, guardians, and faculty through school websites, handbooks, letters to parents and guardians, or other reasonable means of communication.

(4) The State Board of Education may consult with appropriate committees, including committees that provide opportunities for the input of parents, law enforcement, and community agencies, as it develops, enacts, and administers the rules described in Subsection (1).

Section 54. Section **53A-17a-165** is amended to read:

53A-17a-165. Enhancement for Accelerated Students Program.

(1) As used in this section, "eligible low-income student" means a student who:

(a) takes an Advanced Placement test;

(b) has applied for an Advanced Placement test fee reduction; and

(c) qualifies for a free lunch or a lunch provided at reduced cost.

(2) The State Board of Education shall distribute money appropriated for the Enhancement for Accelerated Students Program to school districts and charter schools according to a formula adopted by the State Board of Education, after consultation with school districts and charter schools.

(3) A distribution formula adopted under Subsection (2) may include an allocation of money for:

(a) Advanced Placement courses;

(b) Advanced Placement test fees of eligible low-income students;

(c) gifted and talented programs, including professional development for teachers of high ability students; and

(d) International Baccalaureate programs.

(4) The greater of 1.5% or $100,000 of the appropriation for the Enhancement for Accelerated Students Program may be allowed for International Baccalaureate programs.

(5) A school district or charter school shall use money distributed under this section to enhance the academic growth of students whose academic achievement is accelerated.

(6) (a) The State Board of Education shall develop performance criteria to measure the effectiveness of the Enhancement for Accelerated Students Program and make an annual report to the Public Education Appropriations Subcommittee on the effectiveness of the program.

(b) In the report required by Subsection (6)(a), the State Board of Education shall include data showing the use and impact of money allocated for Advanced Placement test fees of eligible low-income students.

Section 55. Section **53B-24-102** is amended to read:

53B-24-102. Definitions.

As used in this chapter:

(1) "Accredited clinical education program" means a clinical education program for a health care profession that is accredited by the Accreditation Council on Graduate Medical Education.

(2) "Accredited clinical training program" means a clinical training program that is accredited by an entity recognized within medical education circles as an accrediting body for medical education, advanced practice nursing education, physician assistance education, doctor of pharmacy education, or registered nursing education.

(3) "Centers for Medicare and Medicaid Services" means the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services.

[~~(3)~~] (4) "Council" means the Medical Education Council created under Section 53B-24-302.

[~~(4) "Health Care Financing Administration" means the Health Care Financing Administration within the United States Department of Health and Human Services.~~]

(5) "Health care professionals in training" means medical students and residents, advance practice nursing students, physician assistant students, doctor of pharmacy students, and registered nursing students.

(6) "Program" means the Medical Education Program created under Section

53B-24-202.

Section 56. Section **53B-24-202** is amended to read:

53B-24-202. Medical Education Program.

(1) There is created a Medical Education Program to be administered by the Medical Education Council in cooperation with the Division of Finance.

(2) The program shall be funded from money received for graduate medical education from:

(a) the federal [~~Health Care Financing Administration~~] Centers for Medicare and Medicaid Services or other federal agency;

(b) state appropriations; and

(c) donation or private contributions.

(3) All funding for this program shall be nonlapsing.

(4) Program money may only be expended if:

(a) approved by the council; and

(b) used for graduate medical education in accordance with Subsection 53B-24-303(7).

Section 57. Section **53B-24-303** is amended to read:

53B-24-303. Duties of council.

The council shall:

(1) submit an application in accordance with federal law for a demonstration project to the [~~Health Care Financing Administration~~] Centers for Medicare and Medicaid Services before December 31, 1997, for the purpose of receiving and disbursing federal funds for direct and indirect graduate medical education expenses;

(2) seek private and public contributions for the program;

(3) study and recommend options for financing graduate medical education to the State Board of Regents and the Legislature;

(4) advise the State Board of Regents and the Legislature on the status and needs of health care professionals in training;

(5) determine the method for reimbursing institutions that sponsor health care professionals in training;

(6) determine the number and type of positions for health care professionals in training for which program money may be used; and

(7) distribute program money for graduate medical education in a manner that:

(a) prepares postgraduate medical residents, as defined by the accreditation council on graduate medical education, for inpatient, outpatient, hospital, community, and geographically diverse settings;

(b) encourages the coordination of interdisciplinary clinical training among health care professionals in training;

(c) promotes stable funding for the clinical training of health care professionals in training; and

(d) only funds accredited clinical training programs.

Section 58. Section **53B-24-402** is amended to read:

53B-24-402. Rural residency training program.

(1) For purposes of this section:

(a) "Physician" means:

(i) a person licensed to practice medicine under Title 58, Chapter 67, Utah Medical Practice Act or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

(ii) a person licensed to practice dentistry under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act.

(b) "Rural residency training program" means an accredited clinical training program as defined in Section 53B-24-102 which places a physician into a rural county for a part or all of the physician's clinical training.

(2) (a) Subject to appropriations from the Legislature, the council shall establish a pilot program to place physicians into rural residency training programs.

(b) The pilot program shall begin July 1, 2005 and sunset July 1, 2015, in accordance with Section [~~63I-1-263~~] 63I-1-253.

Section 59. Section **53D-1-301** is amended to read:

53D-1-301. Board of trustees -- Creation -- Membership.

(1) There is created a School and Institutional Trust Fund Board of Trustees.

(2) The board consists of:

(a) the state treasurer; and

(b) four additional members who are appointed by the state treasurer on a nonpartisan basis from a list of at least two qualified candidates per position, nominated by the nominating

committee, as provided in Section 53D-1-503.

(3) The state treasurer shall appoint members under Subsection (2)(b) who possess:

(a) outstanding professional qualifications pertinent to the prudent investment of trust fund money; and

(b) expertise in institutional investment management.

(4) (a) The term of a board member under Subsection (2)(b) is six years.

(b) Notwithstanding Subsection (4)(a), the nominating committee shall stagger terms of initial board members so that the term of not more than one member expires in any year.

(c) A board member may not serve consecutive terms, except that:

(i) a board member whose term is less than six years because of the staggering of terms under Subsection (4)(b) may serve a full consecutive term after the completion of the initial term; and

(ii) a member appointed to fill a vacancy may serve a full consecutive term after filling a previous unexpired term.

(d) A board member shall serve until a successor is appointed, confirmed, and qualified.

(5) Before assuming duties as a board member, a member shall take an oath of office that includes the following:

"I solemnly swear to carry out my duties as a member of the School and Institutional Trust Fund Board of Trustees and to act with undivided loyalty to the beneficiaries of the trust fund that the board oversees, to the best of my abilities and consistent with the law."

(6) The state treasurer may remove a board member for cause, subject to the affirmative vote of at least two other board members, besides the state treasurer.

(7) The state treasurer shall fill a vacancy in the same manner as the initial appointment under Subsection (2)(b)[~~(i)~~].

(8) A board member may not receive any compensation or benefits for the member's service, but the member may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

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

Section 60. Section **53D-1-402** is amended to read:

53D-1-402. Director duties and responsibilities.

(1) The director has broad authority to manage the office to fulfill its purposes, consistent with the enabling act, the Utah Constitution, state law, and board policies.

(2) The director shall:

(a) before assuming the duties of director, take an oath that includes the following:

"I solemnly swear to carry out my duties as director of the School and Institutional Trust Fund Office with undivided loyalty to the beneficiaries of the trust fund managed by the office, to the best of my abilities and consistent with the law.";

(b) carry out the policies of the board;

(c) act with undivided loyalty to those entitled to the benefit of income from the trust fund, consistent with the director's fiduciary duties and responsibilities;

(d) follow the prudent investor rule, prudently seeking to obtain the optimum return from the investment of trust fund money and assets, balancing short-term and long-term interests under the principle of intergenerational equity;

(e) exercise full discretionary authority to manage, maintain, transfer, or sell assets of the trust fund in the manner that the director determines to be most favorable to beneficiaries;

(f) maintain the integrity of the trust fund and prevent, through prudent management, the misapplication of trust fund money;

(g) adopt rules, as provided in Subsection 53D-1-103[~~(3)~~](4), that are necessary for the proper exercise of the director's duties under this chapter and policies established by the board;

(h) faithfully manage the office under policies established by the board;

(i) annually submit to the board:

(i) an office budget; and

(ii) a financial plan for operations of the office;

(j) after board approval of the office budget, submit the budget to the governor and the Legislature;

(k) direct and control budget expenditures;

(l) establish job descriptions and, within budgetary constraints, employ staff necessary to accomplish the purposes of the office;

(m) in accordance with generally accepted principles of fund accounting, establish a

system to identify and account for the trust fund assets;

(n) notify the director of the school children's trust section of major items that the director knows may be useful to the director of the school children's trust section in protecting the rights of beneficiaries;

(o) maintain appropriate records of trust fund activities to enable auditors to conduct periodic audits;

(p) respond in writing within a reasonable time to a request by the director of the school children's trust section for information on policies and practices affecting the management of the trust fund; and

(q) respond to a question that the board submits under Subsection 53D-1-303(4)[~~(c)~~](b) within a reasonable time after receiving the question.

(3) The office may:

(a) sue or be sued; and

(b) contract with other public agencies for personnel management services.

Section 61. Section **57-8a-209** is amended to read:

57-8a-209. Rental restrictions.

(1) As used in this section, "rentals" or "rental lot" means:

(a) a lot owned by an individual not described in Subsection (1)(b) that is occupied by someone while no lot owner occupies the lot as the lot owner's primary residence; and

(b) a lot owned by an entity or trust, regardless of who occupies the lot.

(2) (a) Subject to Subsections (2)(b), (6), and (7), an association may:

(i) create restrictions on the number and term of rentals in an association; or

(ii) prohibit rentals in the association.

(b) An association that creates a rental restriction or prohibition in accordance with Subsection [~~(1)(a)(i)~~] (2)(a) shall create the rental restriction or prohibition in a recorded declaration of covenants, conditions, and restrictions, or by amending the recorded declaration of covenants, conditions, and restrictions.

(3) If an association prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:

(a) a provision that requires the association to exempt from the rental restrictions the following lot owner and the lot owner's lot:

(i) a lot owner in the military for the period of the lot owner's deployment;

(ii) a lot occupied by a lot owner's parent, child, or sibling;

(iii) a lot owner whose employer has relocated the lot owner for no less than two years; or

(iv) a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:

(A) the estate of a current resident of the lot; or

(B) the parent, child, or sibling of the current resident of the lot;

(b) a provision that allows a lot owner who has a rental in the association before the time the rental restriction described in Subsection (2)(a) is recorded with the county recorder of the county in which the association is located to continue renting until:

(i) the lot owner occupies the lot; or

(ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot; and

(c) a requirement that the association create, by rule or resolution, procedures to:

(i) determine and track the number of rentals and lots in the association subject to the provisions described in Subsections (3)(a) and (b); and

(ii) ensure consistent administration and enforcement of the rental restrictions.

(4) For purposes of Subsection (3)(b), a transfer occurs when one or more of the following occur:

(a) the conveyance, sale, or other transfer of a lot by deed;

(b) the granting of a life estate in the lot; or

(c) if the lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(5) This section does not limit or affect residency age requirements for an association that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.

(6) The declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot

from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (3)(a).

(7) Subsections (2) through (6) do not apply to:

(a) an association that contains a time period unit as defined in Section 57-8-3;

(b) any other form of timeshare interest as defined in Section 57-19-2; or

(c) an association in which the initial declaration of covenants, conditions, and restrictions is recorded before May 12, 2009.

(8) Notwithstanding this section, an association may, upon unanimous approval by all lot owners, restrict or prohibit rentals without an exception described in Subsection (3).

(9) Except as provided in Subsection (10), an association may not require a lot owner who owns a rental lot to:

(a) obtain the association's approval of a prospective renter; or

(b) give the association:

(i) a copy of a rental application;

(ii) a copy of a renter's or prospective renter's credit information or credit report;

(iii) a copy of a renter's or prospective renter's background check; or

(iv) documentation to verify the renter's age.

(10) (a) A lot owner who owns a rental lot shall give an association the documents described in Subsection (9)(b) if the lot owner is required to provide the documents by court order or as part of discovery under the Utah Rules of Civil Procedure.

(b) If an association's declaration of covenants, conditions, and restrictions lawfully prohibits or restricts occupancy of the lots by a certain class of individuals, the association may require a lot owner who owns a rental lot to give the association the information described in Subsection (9)(b), if:

(i) the information helps the association determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions; and

(ii) the association uses the information to determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions.

Section 62. Section **57-17-3** is amended to read:

57-17-3. Deductions from deposit -- Written itemization -- Time for return.

(1) Upon termination of a tenancy, the owner or the owner's agent may apply property or money held as a deposit toward the payment of rent, damages to the premises beyond reasonable wear and tear, other costs and fees provided for in the contract, or cleaning of the unit.

(2) No later than 30 days after the day on which a renter vacates and returns possession of a rental property to the owner or the owner's agent, the owner or the owner's agent shall deliver to the renter at the renter's last known address:

(a) the balance of any deposit;

(b) the balance of any prepaid rent; and

(c) if the owner or the owner's agent made any deductions from the deposit or prepaid rent, a written notice that itemizes and explains the reason for each deduction.

(3) If an owner or the owner's agent fails to comply with the requirements described in Subsection (2), the renter may serve the owner or the owner's agent, in accordance with Subsection (4), a notice that:

(a) states:

(i) the names of the parties to the rental agreement;

(ii) the day on which the renter vacated the rental property;

(iii) that the owner or the owner's agent has failed to comply with the requirements described in Subsection (2); and

(iv) the address where the owner or the owner's agent may send the items described in Subsection (2); and

(b) is substantially in the following form:

TENANT'S NOTICE TO PROVIDE DEPOSIT DISPOSITION

TO: (insert owner or owner's agent's name)

RE: (insert address of rental property)

NOTICE IS HEREBY GIVEN THAT WITHIN FIVE (5) CALENDAR DAYS pursuant to Utah Code Sections 57-17-3 et seq., the owner or the owner's agent must provide the tenant, at the address below, a refund of the balance of any security deposit, the balance of any prepaid rent, and a notice of any deductions from the security deposit or prepaid rent as allowed by law.

NOTICE IS FURTHER GIVEN that failure to comply with this notice will require the

owner to refund the entire security deposit, the full amount of any prepaid rent, and a penalty of $100. If the entire security deposit, the full amount of any prepaid rent, and the penalty of $100 is not tendered to the tenant, and the tenant is required to initiate litigation to enforce the provisions of the statute, the owner may be liable for the tenant's court costs and attorney fees.

Tenant's Name(s):_____

Mailing Address_____ City_____ State_____ Zip_____

This is a legal document. Please read and comply with the document's terms.

Dated this _____ day of _____, 20____.

Return of Service

On this _____ day of _____, 20____, I swear and attest that I served this notice in compliance with Utah Code Section 57-17-3 by:

____ Delivering a copy to the owner or the owner's agent personally at the address provided in the lease agreement;

____ Leaving a copy with a person of suitable age and discretion at the address provided in the lease agreement because the owner or the owner's agent was absent from the address provided in the lease agreement;

____ Affixing a copy in a conspicuous place at the address provided in the lease agreement because a person of suitable age or discretion could not be found at the address provided in the lease agreement; or

____ Sending a copy through registered or certified mail to the owner or the owner's agent at the address provided in the lease agreement.

The owner's address to which the service was effected is:

Address_____ City_____ State_____ Zip_____

_____ (server's signature)

Self-Authentication Declaration

Pursuant to Utah Code Section [~~46-5-101~~] 78B-5-705, I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

Executed this _____ day of _____, 20____.

_____ (server's signature)

(4) A notice described in Subsection (3) shall be served:

(a) (i) by delivering a copy to the owner or the owner's agent personally at the address

provided in the lease agreement;

(ii) if the owner or the owner's agent is absent from the address provided in the lease agreement, by leaving a copy with a person of suitable age and discretion at the address provided in the lease agreement; or

(iii) if a person of suitable age or discretion cannot be found at the address provided in the lease agreement, by affixing a copy in a conspicuous place at the address provided in the lease agreement; or

(b) by sending a copy through registered or certified mail to the owner or the owner's agent at the address provided in the lease agreement.

(5) Within five business days after the day on which the notice described in Subsection (3) is served, the owner or the owner's agent shall comply with the requirements described in Subsection (2).

Section 63. Section **57-17-5** is amended to read:

57-17-5. Failure to return deposit or prepaid rent or to give required notice -- Recovery of deposit, penalty, costs, and attorney fees.

(1) If an owner or the owner's agent fails to comply with the requirements described in Subsection [~~57-17-4~~] 57-17-3(5), the renter may:

(a) recover from the owner:

(i) if the owner or the owner's agent failed to timely return the balance of the renter's deposit, the full deposit;

(ii) if the owner or the owner's agent failed to timely return the balance of the renter's prepaid rent, the full amount of the prepaid rent; and

(iii) a civil penalty of $100; and

(b) file an action in district court to enforce compliance with the provisions of this section.

(2) In an action under Subsection (1)(b), the court shall award costs and attorney fees to the prevailing party if the court determines that the opposing party acted in bad faith.

(3) A renter is not entitled to relief under this section if the renter fails to serve a notice in accordance with Subsection 57-17-3(3).

(4) This section does not preclude an owner or a renter from recovering other damages to which the owner or the renter is entitled.

Section 64. Section **58-11a-302** is amended to read:

58-11a-302. Qualifications for licensure.

(1) Each applicant for licensure as a barber shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized barber school, or a licensed or recognized cosmetology/barber school, whose curriculum consists of a minimum of 1,000 hours of instruction, or the equivalent number of credit hours, over a period of not less than 25 weeks;

(ii) (A) graduation from a recognized barber school located in a state other than Utah whose curriculum consists of less than 1,000 hours of instruction or the equivalent number of credit hours; and

(B) practice as a licensed barber in a state other than Utah for not less than the number of hours required to equal 1,000 total hours when added to the hours of instruction described in Subsection (1)(d)(ii)(A); or

(iii) completion of an approved barber apprenticeship; and

(e) meet the examination requirement established by rule.

(2) Each applicant for licensure as a barber instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a barber;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school as defined by rule consisting of a minimum of 500 hours or the equivalent number of credit hours; or

(ii) a minimum of 2,000 hours of experience as a barber; and

(f) meet the examination requirement established by rule.

(3) Each applicant for licensure as a barber school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for barber schools, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).

(4) Each applicant for licensure as a cosmetologist/barber shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) (A) graduation from a licensed or recognized cosmetology/barber school whose curriculum consists of a minimum of 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours, if the applicant was not a currently enrolled student of a cosmetology/barber school on January 1, 2013; or

(B) graduation from a licensed or recognized cosmetology/barber school whose curriculum consists of a minimum of 2,000 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours, if the applicant's hours of instruction commenced before January 1, 2013, and the applicant was a currently enrolled student of a cosmetology/barber school on January 1, 2013;

(ii) (A) graduation from a recognized cosmetology/barber school located in a state other than Utah whose curriculum consists of less than 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and

(B) practice as a licensed cosmetologist/barber in a state other than Utah for not less than the number of hours required to equal 1,600 total hours when added to the hours of

instruction described in Subsection (4)(d)(ii)(A); or

(iii) completion of an approved cosmetology/barber apprenticeship; and

(e) meet the examination requirement established by rule.

(5) Each applicant for licensure as a cosmetologist/barber instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a cosmetologist/barber;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school as defined by rule consisting of a minimum of 1,000 hours or the equivalent number of credit hours; or

(ii) a minimum of 3,000 hours of experience as a cosmetologist/barber; and

(f) meet the examination requirement established by rule.

(6) Each applicant for licensure as a cosmetologist/barber school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for cosmetology schools, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).

(7) Each applicant for licensure as an electrologist shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of having graduated from a licensed or recognized electrology school after completing a curriculum of 600 hours of instruction or the equivalent number of credit hours; and

(e) meet the examination requirement established by rule.

(8) Each applicant for licensure as an electrologist instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as an electrologist;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school as defined by rule consisting of a minimum of 175 hours or the equivalent number of credit hours; or

(ii) a minimum of 1,000 hours of experience as an electrologist; and

(f) meet the examination requirement established by rule.

(9) Each applicant for licensure as an electrologist school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for electrologist schools, including staff, curriculum, and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).

(10) Each applicant for licensure as an esthetician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of one of the following:

(i) graduation from a licensed or recognized esthetic school or a licensed or recognized cosmetology/barber school whose curriculum consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the equivalent number of credit hours;

(ii) completion of an approved esthetician apprenticeship; or

(iii) (A) graduation from a recognized cosmetology/barber school located in a state other than Utah whose curriculum consists of less than 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and

(B) practice as a licensed cosmetologist/barber for not less than the number of hours required to equal 1,600 total hours when added to the hours of instruction described in Subsection (10)(d)(iii)(A); and

(e) meet the examination requirement established by division rule.

(11) Each applicant for licensure as a master esthetician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) completion of at least 1,200 hours of training, or the equivalent number of credit hours, at a licensed or recognized esthetics school, except that up to 600 hours toward the 1,200 hours may have been completed:

(A) at a licensed or recognized cosmetology/barbering school, if the applicant graduated from the school and its curriculum consisted of at least 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; or

(B) at a licensed or recognized cosmetology/barber school located in a state other than Utah, if the applicant graduated from the school and its curriculum contained full flexibility within its hours of instruction; or

(ii) completion of an approved master esthetician apprenticeship;

(e) if the applicant will practice lymphatic massage, provide satisfactory documentation to show completion of 200 hours of training, or the equivalent number of credit hours, in

lymphatic massage as defined by division rule; and

(f) meet the examination requirement established by division rule.

(12) Each applicant for licensure as an esthetician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a master esthetician;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours; or

(ii) a minimum of 1,000 hours of experience in esthetics; and

(f) meet the examination requirement established by rule.

(13) Each applicant for licensure as an esthetics school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for esthetics schools, including staff, curriculum, and accreditation requirements, established by division rule made in collaboration with the board; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).

(14) Each applicant for licensure as a nail technician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized nail technology school, or a licensed or recognized cosmetology/barber school, whose curriculum consists of not less than 300 hours of instruction, or the equivalent number of credit hours;

(ii) (A) graduation from a recognized nail technology school located in a state other than Utah whose curriculum consists of less than 300 hours of instruction or the equivalent number of credit hours; and

(B) practice as a licensed nail technician in a state other than Utah for not less than the number of hours required to equal 300 total hours when added to the hours of instruction described in Subsection (14)(d)(ii)(A); or

(iii) completion of an approved nail technician apprenticeship; and

(e) meet the examination requirement established by division rule.

(15) Each applicant for licensure as a nail technician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a nail technician;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school as defined by rule consisting of a minimum of 150 hours or the equivalent number of credit hours; or

(ii) a minimum of 600 hours of experience in nail technology; and

(f) meet the examination requirement established by rule.

(16) Each applicant for licensure as a nail technology school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for nail technology schools, including staff, curriculum, and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (19).

(17) Each applicant for licensure under this chapter whose education in the field for which a license is sought was completed at a foreign school may satisfy the educational requirement for licensure by demonstrating, to the satisfaction of the division, the educational equivalency of the foreign school education with a licensed school under this chapter.

(18) (a) A licensed or recognized school under this section may accept credit hours towards graduation for any profession listed in this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, the division may make rules governing the acceptance of credit hours under Subsection (18)(a).

(19) A school licensed or applying for licensure under this chapter shall maintain recognition as an institution of postsecondary study by meeting the following conditions:

(a) the school shall admit as a regular student only an individual who has earned a recognized high school diploma or the equivalent of a recognized high school diploma, or who is beyond the age of compulsory high school attendance as prescribed by Title 53A, Chapter 11; and

(b) the school shall be licensed by name, or in the case of an applicant, shall apply for licensure by name, under this chapter to offer one or more training programs beyond the secondary level.

Section 65. Section **58-17b-308** is amended to read:

58-17b-308. Term of license -- Expiration -- Renewal.

(1) Except as provided in Subsection (2), each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle. Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

(2) The duration of a pharmacy intern license may be no longer than:

(a) one year for a license issued under Subsection 58-17b-304(7)(b) [~~or (c)~~]; or

(b) five years for a license issued under Subsection 58-17b-304(7)(a).

(3) A pharmacy intern license issued under this chapter may not be renewed, but may be extended by the division in collaboration with the board.

Section 66. Section **58-31d-103** is amended to read:

58-31d-103. Rulemaking authority -- Enabling provisions.

(1) The division may adopt rules necessary to implement Section 58-31d-102.

(2) As used in Article VIII (1) of the Advanced Practice Registered Nurse Compact, "head of the licensing board" means the executive administrator of the Utah Board of Nursing.

(3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as defined in Article II (1) of the compact includes an individual who is:

(a) licensed to practice under Subsection 58-31b-301(2) as an advanced practice registered nurse; or

(b) licensed to practice under Section 58-44a-301 as a certified nurse midwife.

(4) An APRN practicing in this state under a multistate licensure privilege may only be granted prescriptive authority if that individual can document completion of graduate level course work in the following areas:

(a) advanced health assessment;

(b) pharmacotherapeutics; and

(c) diagnosis and treatment.

(5) (a) An APRN practicing in this state under a multistate privilege who seeks to obtain prescriptive authority must:

(i) meet all the requirements of Subsection (4) and this Subsection (5); and

(ii) be placed on a registry with the division.

(b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:

(i) submit a form prescribed by the division;

(ii) pay a fee; and

(iii) if prescribing a controlled substance:

(A) obtain a controlled substance license as required under Section 58-37-6; and

(B) if prescribing a Schedule II or III controlled substance, have a consultation and referral plan with a physician licensed in Utah as required under Subsection

58-31b-102(13)(c)(iii) or 58-44a-102[~~(8)(b)(iii)(C)~~](9)(c)(iii)(C).

Section 67. Section **58-37-2** is amended to read:

58-37-2. Definitions.

(1) As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(ii) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or practitioner but does not include a motor carrier, public warehouseman, or employee of any of them.

(c) "Consumption" means ingesting or having any measurable amount of a controlled substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a controlled substance.

(d) "Continuing criminal enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or groups of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities created or maintained for the purpose of engaging in conduct which constitutes the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.

(e) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under Section 58-37-3.

(f) (i) "Controlled substance" means a drug or substance:

(A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

(B) included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513;

(C) that is a controlled substance analog; or

(D) listed in Section 58-37-4.2.

(ii) "Controlled substance" does not include:

(A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32B, Alcoholic Beverage Control Act;

(B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(C) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which:

(I) are not otherwise regulated by law; and

(II) may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(g) (i) "Controlled substance analog" means:

(A) a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in Schedules I and II of Section 58-37-4, a substance listed in Section 58-37-4.2, or in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513;

(B) a substance which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513; or

(C) A substance which, with respect to a particular individual, is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central

nervous system of controlled substances listed in Schedules I and II of Section 58-37-4, substances listed in Section 58-37-4.2, or substances listed in Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513.

(ii) "Controlled substance analog" does not include:

(A) a controlled substance currently scheduled in Schedules I through V of Section 58-37-4;

(B) a substance for which there is an approved new drug application;

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355, to the extent the conduct with respect to the substance is permitted by the exemption;

(D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance;

(E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

(F) dietary supplements, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise regulated by law, which may contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(h) (i) "Conviction" means a determination of guilt by verdict, whether jury or bench, or plea, whether guilty or no contest, for any offense proscribed by [~~Title 58, Chapters 37, 37a, 37b, 37c, or 37d,~~]:

(A) Chapter 37, Utah Controlled Substances Act;

(B) Chapter 37a, Utah Drug Paraphernalia Act;

(C) Chapter 37b, Imitation Controlled Substances Act;

(D) Chapter 37c, Utah Controlled Substance Precursor Act; or

(E) Chapter 37d, Clandestine Drug Lab Act; or

(ii) for any offense under the laws of the United States and any other state which, if committed in this state, would be an offense under [~~Title 58, Chapters 37, 37a, 37b, 37c, or 37d.~~]:

(A) Chapter 37, Utah Controlled Substances Act;

(B) Chapter 37a, Utah Drug Paraphernalia Act;

(C) Chapter 37b, Imitation Controlled Substances Act;

(D) Chapter 37c, Utah Controlled Substance Precursor Act; or

(E) Chapter 37d, Clandestine Drug Lab Act.

(i) "Counterfeit substance" means:

(i) any controlled substance or container or labeling of any controlled substance that:

(A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a controlled substance distributed by any other manufacturer, distributor, or dispenser; and

(B) a reasonable person would believe to be a controlled substance distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled substance; or

(ii) any substance other than under Subsection (1)(i)(i) that:

(A) is falsely represented to be any legally or illegally manufactured controlled substance; and

(B) a reasonable person would believe to be a legal or illegal controlled substance.

(j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not an agency relationship exists.

(k) "Department" means the Department of Commerce.

(l) "Depressant or stimulant substance" means:

(i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid;

(ii) a drug which contains any quantity of:

(A) amphetamine or any of its optical isomers;

(B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

(C) any substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found and by regulation designated

habit-forming because of its stimulant effect on the central nervous system;

(iii) lysergic acid diethylamide; or

(iv) any drug which contains any quantity of a substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(m) "Dispense" means the delivery of a controlled substance by a pharmacist to an ultimate user pursuant to the lawful order or prescription of a practitioner, and includes distributing to, leaving with, giving away, or disposing of that substance as well as the packaging, labeling, or compounding necessary to prepare the substance for delivery.

(n) "Dispenser" means a pharmacist who dispenses a controlled substance.

(o) "Distribute" means to deliver other than by administering or dispensing a controlled substance or a listed chemical.

(p) "Distributor" means a person who distributes controlled substances.

(q) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(r) (i) "Drug" means:

(A) a substance recognized in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) a substance that is required by any applicable federal or state law or rule to be dispensed by prescription only or is restricted to administration by practitioners only;

(C) a substance other than food intended to affect the structure or any function of the body of humans or other animals; and

(D) substances intended for use as a component of any substance specified in Subsections (1)(r)(i)(A), (B), and (C).

(ii) "Drug" does not include dietary supplements.

(s) "Drug dependent person" means any individual who unlawfully and habitually uses any controlled substance to endanger the public morals, health, safety, or welfare, or who is so dependent upon the use of controlled substances as to have lost the power of self-control with

reference to the individual's dependency.

(t) "Food" means:

(i) any nutrient or substance of plant, mineral, or animal origin other than a drug as specified in this chapter, and normally ingested by human beings; and

(ii) foods for special dietary uses as exist by reason of a physical, physiological, pathological, or other condition including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and overweight; uses for supplying a particular dietary need which exist by reason of age including but not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for use of a food. Any particular use of a food is a special dietary use regardless of the nutritional purposes.

(u) "Immediate precursor" means a substance which the Attorney General of the United States has found to be, and by regulation designated as being, the principal compound used or produced primarily for use in the manufacture of a controlled substance, or which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(v) "Indian" means a member of an Indian tribe.

(w) "Indian religion" means any religion:

(i) the origin and interpretation of which is from within a traditional Indian culture or community; and

(ii) which is practiced by Indians.

(x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village, which is legally recognized as eligible for and is consistent with the special programs, services, and entitlements provided by the United States to Indians because of their status as Indians.

(y) "Manufacture" means the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

(z) "Manufacturer" includes any person who packages, repackages, or labels any container of any controlled substance, except pharmacists who dispense or compound prescription orders for delivery to the ultimate consumer.

(aa) "Marijuana" means all species of the genus cannabis and all parts of the genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the substances contained in the plant cannabis sativa or any other species of the genus cannabis which are chemically indistinguishable and pharmacologically active are also included.

(bb) "Money" means officially issued coin and currency of the United States or any foreign country.

(cc) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) opium, coca leaves, and opiates;

(ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(iii) opium poppy and poppy straw; or

(iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the substance, which is chemically identical with any of the substances referred to in Subsection (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

(dd) "Negotiable instrument" means documents, containing an unconditional promise to pay a sum of money, which are legally transferable to another party by endorsement or delivery.

(ee) "Opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug

having addiction-forming or addiction-sustaining liability.

(ff) "Opium poppy" means the plant of the species papaver somniferum L., except the seeds of the plant.

(gg) "Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

(hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ii) "Possession" or "use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and includes individual, joint, or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, it is not required that the person be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of any substances with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.

(jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(kk) "Prescribe" means to issue a prescription:

(i) orally or in writing; or

(ii) by telephone, facsimile transmission, computer, or other electronic means of communication as defined by division rule.

(ll) "Prescription" means an order issued:

(i) by a licensed practitioner, in the course of that practitioner's professional practice or by collaborative pharmacy practice agreement; and

(ii) for a controlled substance or other prescription drug or device for use by a patient or an animal.

(mm) "Production" means the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of property.

(oo) "State" means the state of Utah.

(pp) "Ultimate user" means any person who lawfully possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administration to an animal owned by the person or a member of the person's household.

(2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah Criminal Code, shall apply.

Section 68. Section **58-37-4** is amended to read:

58-37-4. Schedules of controlled substances -- Schedules I through V -- Findings required -- Specific substances included in schedules.

(1) There are established five schedules of controlled substances known as Schedules I, II, III, IV, and V which consist of substances listed in this section.

(2) Schedules I, II, III, IV, and V consist of the following drugs or other substances by the official name, common or usual name, chemical name, or brand name designated:

(a) Schedule I:

(i) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(B) Acetylmethadol;

(C) Allylprodine;

(D) Alphacetylmethadol, except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(E) Alphameprodine;

(F) Alphamethadol;

(G) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]

propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(H) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(I) Benzylpiperazine;

(J) Benzethidine;

(K) Betacetylmethadol;

(L) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(M) Beta-hydroxy-3-methylfentanyl, other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(N) Betameprodine;

(O) Betamethadol;

(P) Betaprodine;

(Q) Clonitazene;

(R) Dextromoramide;

(S) Diampromide;

(T) Diethylthiambutene;

(U) Difenoxin;

(V) Dimenoxadol;

(W) Dimepheptanol;

(X) Dimethylthiambutene;

(Y) Dioxaphetyl butyrate;

(Z) Dipipanone;

(AA) Ethylmethylthiambutene;

(BB) Etonitazene;

(CC) Etoxeridine;

(DD) Furethidine;

(EE) Hydroxypethidine;

(FF) Ketobemidone;

(GG) Levomoramide;

(HH) Levophenacylmorphan;

(II) Morpheridine;

(JJ) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(KK) Noracymethadol;

(LL) Norlevorphanol;

(MM) Normethadone;

(NN) Norpipanone;

(OO) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4- piperidinyl] propanamide;

(PP) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(QQ) Phenadoxone;

(RR) Phenampromide;

(SS) Phenomorphan;

(TT) Phenoperidine;

(UU) Piritramide;

(VV) Proheptazine;

(WW) Properidine;

(XX) Propiram;

(YY) Racemoramide;

(ZZ) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- propanamide;

(AAA) Tilidine;

(BBB) Trimeperidine;

(CCC) 3-methylfentanyl, including the optical and geometric isomers (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]- N-phenylpropanamide); and

(DDD) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;

(B) Acetyldihydrocodeine;

(C) Benzylmorphine;

(D) Codeine methylbromide;

(E) Codeine-N-Oxide;

(F) Cyprenorphine;

(G) Desomorphine;

(H) Dihydromorphine;

(I) Drotebanol;

(J) Etorphine (except hydrochloride salt);

(K) Heroin;

(L) Hydromorphinol;

(M) Methyldesorphine;

(N) Methylhydromorphine;

(O) Morphine methylbromide;

(P) Morphine methylsulfonate;

(Q) Morphine-N-Oxide;

(R) Myrophine;

(S) Nicocodeine;

(T) Nicomorphine;

(U) Normorphine;

(V) Pholcodine; and

(W) Thebacon.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation; as used in this Subsection (2)(a)(iii) only, "isomer" includes the optical, position, and geometric isomers:

(A) Alpha-ethyltryptamine, some trade or other names: etryptamine; Monase; α-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; α-ET; and AET;

(B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names: 4-bromo-2,5-dimethoxy-α-methylphenethylamine; 4-bromo-2,5-DMA;

(C) 4-bromo-2,5-dimethoxyphenethylamine, some trade or other names:

2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(D) 2,5-dimethoxyamphetamine, some trade or other names:
2,5-dimethoxy-α-methylphenethylamine; 2,5-DMA;

(E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;

(F) 4-methoxyamphetamine, some trade or other names:
4-methoxy-α-methylphenethylamine; paramethoxyamphetamine, PMA;

(G) 5-methoxy-3,4-methylenedioxyamphetamine;

(H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names:
4-methyl-2,5-dimethoxy-α-methylphenethylamine; "DOM"; and "STP";

(I) 3,4-methylenedioxy amphetamine;

(J) 3,4-methylenedioxymethamphetamine (MDMA);

(K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-
alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as
N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

(M) 3,4,5-trimethoxy amphetamine;

(N) Bufotenine, some trade and other names:
3-(β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,
N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;

(P) Dimethyltryptamine, some trade or other names: DMT;

(Q) Ibogaine, some trade and other names:
7-Ethyl-6,6β,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino
[5,4-b] indole; Tabernanthe iboga;

(R) Lysergic acid diethylamide;

(S) Marijuana;

(T) Mescaline;

(U) Parahexyl, some trade or other names:
3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;

(V) Peyote, meaning all parts of the plant presently classified botanically as
Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from

any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));

(W) N-ethyl-3-piperidyl benzilate;

(X) N-methyl-3-piperidyl benzilate;

(Y) Psilocybin;

(Z) Psilocyn;

(AA) Tetrahydrocannabinols, naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Δ1 cis or trans tetrahydrocannabinol, and their optical isomers Δ6 cis or trans tetrahydrocannabinol, and their optical isomers Δ3,4 cis or trans tetrahydrocannabinol, and its optical isomers, and since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered;

(BB) Ethylamine analog of phencyclidine, some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(CC) Pyrrolidine analog of phencyclidine, some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(DD) Thiophene analog of phencyclidine, some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP; and

(EE) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, some other names: TCPy.

(iv) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Mecloqualone; and

(B) Methaqualone.

(v) Any material, compound, mixture, or preparation containing any quantity of the

following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(A) Aminorex, some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(B) Cathinone, some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(C) Fenethylline;

(D) Methcathinone, some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of optical isomers;

(E) (±)cis-4-methylaminorex ((±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(F) N-ethylamphetamine; and

(G) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(vi) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their optical isomers, salts, and salts of isomers, subject to temporary emergency scheduling:

(A) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl); and

(B) N-[1- (2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl).

(vii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of gamma hydroxy butyrate (gamma hydrobutyric acid), including its salts, isomers, and salts of isomers.

(b) Schedule II:

(i) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone,

and their respective salts, but including:

(I) Raw opium;

(II) Opium extracts;

(III) Opium fluid;

(IV) Powdered opium;

(V) Granulated opium;

(VI) Tincture of opium;

(VII) Codeine;

(VIII) Ethylmorphine;

(IX) Etorphine hydrochloride;

(X) Hydrocodone;

(XI) Hydromorphone;

(XII) Metopon;

(XIII) Morphine;

(XIV) Oxycodone;

(XV) Oxymorphone; and

(XVI) Thebaine;

(B) Any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these substances may not include the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of these substances, and includes cocaine and ecgonine, their salts, isomers, derivatives, and salts of isomers and derivatives, whether derived from the coca plant or synthetically produced, except the substances may not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(E) Concentrate of poppy straw, which means the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and

ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation, except dextrorphan and levopropoxyphene:

(A) Alfentanil;

(B) Alphaprodine;

(C) Anileridine;

(D) Bezitramide;

(E) Bulk dextropropoxyphene (nondosage forms);

(F) Carfentanil;

(G) Dihydrocodeine;

(H) Diphenoxylate;

(I) Fentanyl;

(J) Isomethadone;

(K) Levo-alphacetylmethadol, some other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(L) Levomethorphan;

(M) Levorphanol;

(N) Metazocine;

(O) Methadone;

(P) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(Q) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(R) Pethidine (meperidine);

(S) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(U) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(V) Phenazocine;

(W) Piminodine;

(X) Racemethorphan;

(Y) Racemorphan;

(Z) Remifentanil; and

(AA) Sufentanil.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) Methamphetamine, its salts, isomers, and salts of its isomers;

(C) Phenmetrazine and its salts; and

(D) Methylphenidate.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Amobarbital;

(B) Glutethimide;

(C) Pentobarbital;

(D) Phencyclidine;

(E) Phencyclidine immediate precursors: 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC); and

(F) Secobarbital.

(v) (A) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of Phenylacetone.

(B) Some of these substances may be known by trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone.

(vi) Nabilone, another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(c) Schedule III:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers,

and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II, which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitive composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine; and

(E) Phendimetrazine.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them;

(D) Chlorhexadol;

(E) Buprenorphine;

(F) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under the federal Food, Drug, and Cosmetic Act, Section 505;

(G) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine: ± -2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(H) Lysergic acid;

(I) Lysergic acid amide;

(J) Methyprylon;

(K) Sulfondiethylmethane;

(L) Sulfonethylmethane;

(M) Sulfonmethane; and

(N) Tiletamine and zolazepam or any of their salts, some trade or other names for a tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

(iii) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product, some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(iv) Nalorphine.

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized

therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; and

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(vi) Unless specifically excepted or unless listed in another schedule, anabolic steroids including any of the following or any isomer, ester, salt, or derivative of the following that promotes muscle growth:

(A) Boldenone;

(B) Chlorotestosterone (4-chlortestosterone);

(C) Clostebol;

(D) Dehydrochlormethyltestosterone;

(E) Dihydrotestosterone (4-dihydrotestosterone);

(F) Drostanolone;

(G) Ethylestrenol;

(H) Fluoxymesterone;

(I) Formebulone (formebolone);

(J) Mesterolone;

(K) Methandienone;

(L) Methandranone;

(M) Methandriol;

(N) Methandrostenolone;

(O) Methenolone;

(P) Methyltestosterone;

(Q) Mibolerone;

(R) Nandrolone;

(S) Norethandrolone;

(T) Oxandrolone;

(U) Oxymesterone;

(V) Oxymetholone;

(W) Stanolone;

(X) Stanozolol;

(Y) Testolactone;

(Z) Testosterone; and

(AA) Trenbolone.

(vii) Anabolic steroids expressly intended for administration through implants to cattle or other nonhuman species, and approved by the Secretary of Health and Human Services for use, may not be classified as a controlled substance.

(d) Schedule IV:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Alprazolam;

(B) Barbital;

(C) Bromazepam;

(D) Butorphanol;

(E) Camazepam;

(F) Carisoprodol;

(G) Chloral betaine;

(H) Chloral hydrate;

(I) Chlordiazepoxide;

(J) Clobazam;

(K) Clonazepam;

(L) Clorazepate;

(M) Clotiazepam;

(N) Cloxazolam;

(O) Delorazepam;

(P) Diazepam;

(Q) Dichloralphenazone;

(R) Estazolam;

(S) Ethchlorvynol;

(T) Ethinamate;

(U) Ethyl loflazepate;

(V) Fludiazepam;

(W) Flunitrazepam;

(X) Flurazepam;

(Y) Halazepam;

(Z) Haloxazolam;

(AA) Ketazolam;

(BB) Loprazolam;

(CC) Lorazepam;

(DD) Lormetazepam;

(EE) Mebutamate;

(FF) Medazepam;

(GG) Meprobamate;

(HH) Methohexital;

(II) Methylphenobarbital (mephobarbital);

(JJ) Midazolam;

(KK) Nimetazepam;

(LL) Nitrazepam;

(MM) Nordiazepam;

(NN) Oxazepam;

(OO) Oxazolam;

(PP) Paraldehyde;

(QQ) Pentazocine;

(RR) Petrichloral;

(SS) Phenobarbital;

(TT) Pinazepam;

(UU) Prazepam;

(VV) Quazepam;

(WW) Temazepam;

(XX) Tetrazepam;

(YY) Triazolam;

(ZZ) Zaleplon; and

(AAA) Zolpidem.

(iii) Any material, compound, mixture, or preparation of fenfluramine which contains any quantity of the following substances, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric isomers, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Cathine ((+)-norpseudoephedrine);

(B) Diethylpropion;

(C) Fencamfamine;

(D) Fenproprex;

(E) Mazindol;

(F) Mefenorex;

(G) Modafinil;

(H) Pemoline, including organometallic complexes and chelates thereof;

(I) Phentermine;

(J) Pipradrol;

(K) Sibutramine; and

(L) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane), including its salts.

(e) Schedule V: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, which includes one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(vii) unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers; and

(viii) all forms of Tramadol.

Section 69. Section **58-37a-6** is amended to read:

58-37a-6. Seizure -- Forfeiture -- Property rights.

Drug paraphernalia is subject to seizure and forfeiture in accordance with the procedures and substantive protections of Title 24, [~~Chapter 1, Utah Uniform Forfeiture Procedures~~] Forfeiture and Disposition of Property Act.

Section 70. Section **58-37c-3** is amended to read:

58-37c-3. Definitions.

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

(1) "Controlled substance precursor" includes a chemical reagent and means any of the

following:

(a) Phenyl-2-propanone;

(b) Methylamine;

(c) Ethylamine;

(d) D-lysergic acid;

(e) Ergotamine and its salts;

(f) Diethyl malonate;

(g) Malonic acid;

(h) Ethyl malonate;

(i) Barbituric acid;

(j) Piperidine and its salts;

(k) N-acetylanthranilic acid and its salts;

(l) Pyrrolidine;

(m) Phenylacetic acid and its salts;

(n) Anthranilic acid and its salts;

(o) Morpholine;

(p) Ephedrine;

(q) Pseudoephedrine;

(r) Norpseudoephedrine;

(s) Phenylpropanolamine;

(t) Benzyl cyanide;

(u) Ergonovine and its salts;

(v) 3,4-Methylenedioxyphenyl-2-propanone;

(w) propionic anhydride;

(x) Insosafrole;

(y) Safrole;

(z) Piperonal;

(aa) N-Methylephedrine;

(bb) N-ethylephedrine;

(cc) N-methylpseudoephedrine;

(dd) N-ethylpseudoephedrine;

(ee) Hydriotic acid;

(ff) gamma butyrolactone (GBL), including butyrolactone, 1,2 butanolide, 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone, and tetramethylene glycol, but not including gamma aminobutric acid (GABA);

(gg) 1,4 butanediol;

(hh) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections [~~(2)~~] (1)(a) through (gg);

(ii) Crystal iodine;

(jj) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;

(kk) Red phosphorous, except as provided in Section 58-37c-19.7;

(ll) anhydrous ammonia, except as provided in Section 58-37c-19.9;

(mm) any controlled substance precursor listed under the provisions of the Federal Controlled Substances Act which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14; and

(nn) any chemical which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14.

(2) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive, or attempted transfer of a controlled substance precursor.

(3) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

(4) "Person" means any individual, group of individuals, proprietorship, partnership, joint venture, corporation, or organization of any type or kind.

(5) "Practitioner" means a physician, dentist, podiatric physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(6) (a) "Regulated distributor" means a person within the state who provides, sells, furnishes, transfers, or otherwise supplies a listed controlled substance precursor chemical in a regulated transaction.

(b) "Regulated distributor" does not include any person excluded from regulation under

this chapter.

(7) (a) "Regulated purchaser" means any person within the state who receives a listed controlled substance precursor chemical in a regulated transaction.

(b) "Regulated purchaser" does not include any person excluded from regulation under this chapter.

(8) "Regulated transaction" means any actual, constructive or attempted:

(a) transfer, distribution, delivery, or furnishing by a person within the state to another person within or outside of the state of a threshold amount of a listed precursor chemical; or

(b) purchase or acquisition by any means by a person within the state from another person within or outside the state of a threshold amount of a listed precursor chemical.

(9) "Retail distributor" means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor are limited almost exclusively to sales for personal use:

(a) in both number of sales and volume of sales; and

(b) either directly to walk-in customers or in face-to-face transactions by direct sales.

(10) "Threshold amount of a listed precursor chemical" means any amount of a controlled substance precursor or a specified amount of a controlled substance precursor in a matrix; however, the division may exempt from the provisions of this chapter a specific controlled substance precursor in a specific amount and in certain types of transactions which provisions for exemption shall be defined by the division by rule adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and intentionally:

(a) engaging in a regulated transaction without first being appropriately licensed or exempted from licensure under this chapter;

(b) acting as a regulated distributor and selling, transferring, or in any other way conveying a controlled substance precursor to a person within the state who is not appropriately licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or otherwise conveying a controlled substance precursor to a person outside of the state and failing to report the transaction as required;

(c) acting as a regulated purchaser and purchasing or in any other way obtaining a

controlled substance precursor from a person within the state who is not a licensed regulated distributor, or purchasing or otherwise obtaining a controlled substance precursor from a person outside of the state and failing to report the transaction as required;

(d) engaging in a regulated transaction and failing to submit reports and keep required records of inventories required under the provisions of this chapter or rules adopted pursuant to this chapter;

(e) making any false statement in any application for license, in any record to be kept, or on any report submitted as required under this chapter;

(f) with the intent of causing the evasion of the recordkeeping or reporting requirements of this chapter and rules related to this chapter, receiving or distributing any listed controlled substance precursor chemical in any manner designed so that the making of records or filing of reports required under this chapter is not required;

(g) failing to take immediate steps to comply with licensure, reporting, or recordkeeping requirements of this chapter because of lack of knowledge of those requirements, upon becoming informed of the requirements;

(h) presenting false or fraudulent identification where or when receiving or purchasing a listed controlled substance precursor chemical;

(i) creating a chemical mixture for the purpose of evading any licensure, reporting or recordkeeping requirement of this chapter or rules related to this chapter, or receiving a chemical mixture created for that purpose;

(j) if the person is at least 18 years of age, employing, hiring, using, persuading, inducing, enticing, or coercing another person under 18 years of age to violate any provision of this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter by any federal, state, or local law enforcement official; and

(k) obtaining or attempting to obtain or to possess any controlled substance precursor or any combination of controlled substance precursors knowing or having a reasonable cause to believe that the controlled substance precursor is intended to be used in the unlawful manufacture of any controlled substance.

(12) "Unprofessional conduct" as defined in Section 58-1-102 and as may be further defined by rule includes the following:

(a) violation of any provision of this chapter, the Controlled Substance Act of this state

or any other state, or the Federal Controlled Substance Act; and

(b) refusing to allow agents or representatives of the division or authorized law enforcement personnel to inspect inventories or controlled substance precursors or records or reports relating to purchases and sales or distribution of controlled substance precursors as such records and reports are required under this chapter.

Section 71. Section **58-37c-15** is amended to read:

58-37c-15. Civil forfeiture.

The following shall be subject to forfeiture in accordance with the procedures and substantive protections of Title 24, [~~Chapter 1, Utah Uniform Forfeiture Procedures~~] Forfeiture and Disposition of Property Act:

(1) all listed controlled substance precursor chemicals regulated under the provisions of this chapter which have been distributed, possessed, or are intended to be distributed or otherwise transferred in violation of any felony provision of this chapter; and

(2) all property used by any person to facilitate, aid, or otherwise cause the unlawful distribution, transfer, possession, or intent to distribute, transfer, or possess a listed controlled substance precursor chemical in violation of any felony provision of this chapter.

Section 72. Section **58-37d-7** is amended to read:

58-37d-7. Seizure and forfeiture.

Chemicals, equipment, supplies, vehicles, aircraft, vessels, and personal and real property used in furtherance of a clandestine laboratory operation are subject to seizure and forfeiture under the procedures and substantive protections of Title 24, [~~Chapter 1, Utah Uniform Forfeiture Procedures~~] Forfeiture and Disposition of Property Act.

Section 73. Section **58-55-302** is amended to read:

58-55-302. Qualifications for licensure.

(1) Each applicant for a license under this chapter shall:

(a) submit an application prescribed by the division;

(b) pay a fee as determined by the department under Section 63J-1-504;

(c) (i) meet the examination requirements established by rule by the commission with the concurrence of the director, except for the classifications of apprentice plumber and apprentice electrician for whom no examination is required; or

(ii) if required in Section 58-55-304, the individual qualifier must pass the required

examination if the applicant is a business entity;

(d) if an apprentice, identify the proposed supervisor of the apprenticeship;

(e) if an applicant for a contractor's license:

(i) produce satisfactory evidence of financial responsibility, except for a construction trades instructor for whom evidence of financial responsibility is not required;

(ii) produce satisfactory evidence of:

(A) two years full-time paid employment experience in the construction industry, which experience, unless more specifically described in this section, may be related to any contracting classification; and

(B) knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare;

(iii) except as otherwise provided by rule by the commission with the concurrence of the director, complete a 20-hour course established by rule by the commission with the concurrence of the director, which course may include:

(A) construction business practices;

(B) bookkeeping fundamentals;

(C) mechanics lien fundamentals; and

(D) other aspects of business and construction principles considered important by the commission with the concurrence of the director;

(iv) (A) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license;

(B) be a licensed master plumber if an applicant for a plumbing contractor's license or a licensed master residential plumber if an applicant for a residential plumbing contractor's license; or

(C) be a licensed elevator mechanic and produce satisfactory evidence of three years experience as an elevator mechanic if an applicant for an elevator contractor's license; and

(v) when the applicant is an unincorporated entity, provide a list of the one or more individuals who hold an ownership interest in the applicant as of the day on which the application is filed that includes for each individual:

(A) the individual's name, address, birth date, and Social Security number; and

(B) whether the individual will engage in a construction trade; and

(f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.

(2) After approval of an applicant for a contractor's license by the applicable board and the division, the applicant shall file the following with the division before the division issues the license:

(a) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;

(b) proof of public liability insurance in coverage amounts and form established by rule except for a construction trades instructor for whom public liability insurance is not required; and

(c) proof of registration as required by applicable law with the:

(i) Utah Department of Commerce;

(ii) Division of Corporations and Commercial Code;

(iii) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(iv) State Tax Commission; and

(v) Internal Revenue Service.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

(a) (i) A master plumber shall produce satisfactory evidence that the applicant:

(A) has been a licensed journeyman plumber for at least two years and had two years of supervisory experience as a licensed journeyman plumber in accordance with division rule;

(B) has received at least an associate of applied science degree or similar degree following the completion of a course of study approved by the division and had one year of supervisory experience as a licensed journeyman plumber in accordance with division rule; or

(C) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(a)(i)(A) or (B).

(ii) An individual holding a valid Utah license as a journeyman plumber, based on at least four years of practical experience as a licensed apprentice under the supervision of a

licensed journeyman plumber and four years as a licensed journeyman plumber, in effect immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current master plumber license under this chapter, and satisfies the requirements of this Subsection (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

(iii) An individual holding a valid plumbing contractor's license or residential plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5, 2008:

(A) considered to hold a current master plumber license under this chapter if licensed as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303; and

(B) considered to hold a current residential master plumber license under this chapter if licensed as a residential plumbing contractor and a residential journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303.

(b) A master residential plumber applicant shall produce satisfactory evidence that the applicant:

(i) has been a licensed residential journeyman plumber for at least two years and had two years of supervisory experience as a licensed residential journeyman plumber in accordance with division rule; or

(ii) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(b)(i).

(c) A journeyman plumber applicant shall produce satisfactory evidence of:

(i) successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed master plumber or journeyman plumber and in accordance with a planned program of training approved by the division;

(ii) at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board; or

(iii) satisfactory evidence of meeting the qualifications determined by the board to be equivalent to Subsection (3)(c)(i) or (c)(ii).

(d) A residential journeyman plumber shall produce satisfactory evidence of:

(i) completion of the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential master plumber, licensed residential journeyman plumber, or licensed journeyman plumber in accordance with a planned program of training approved by the division;

(ii) completion of at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work; or

(iii) meeting the qualifications determined by the board to be equivalent to Subsection (3)(d)(i) or (d)(ii).

(e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with the following:

(i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be under the immediate supervision of a licensed master plumber, licensed residential master plumber, licensed journeyman plumber, or a licensed residential journeyman plumber; and

(ii) a licensed apprentice plumber in the fourth through tenth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period, but if the apprentice does not become a licensed journeyman plumber or licensed residential journeyman plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer applies.

(f) A master electrician applicant shall produce satisfactory evidence that the applicant:

(i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;

(iii) has four years of practical experience as a journeyman electrician; or

(iv) meets the qualifications determined by the board to be equivalent to Subsection (3)(f)(i), (ii), or (iii).

(g) A master residential electrician applicant shall produce satisfactory evidence that the applicant:

(i) has at least two years of practical experience as a residential journeyman electrician; or

(ii) meets the qualifications determined by the board to be equivalent to this practical experience.

(h) A journeyman electrician applicant shall produce satisfactory evidence that the applicant:

(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;

(ii) has at least eight years of full-time experience approved by the division in collaboration with the Electricians Licensing Board; or

(iii) meets the qualifications determined by the board to be equivalent to Subsection (3)(h)(i) or (ii).

(i) A residential journeyman electrician applicant shall produce satisfactory evidence that the applicant:

(i) has successfully completed two years of training in an electrical training program approved by the division;

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master, journeyman, residential master, or residential journeyman electrician; or

(iii) meets the qualifications determined by the division and applicable board to be equivalent to Subsection (3)(i)(i) or (ii).

(j) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with the following:

(i) A licensed apprentice electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

(ii) A licensed master, journeyman, residential master, or residential journeyman electrician may have under immediate supervision on a residential project up to three licensed apprentice electricians.

(iii) A licensed master or journeyman electrician may have under immediate supervision on nonresidential projects only one licensed apprentice electrician.

(k) An alarm company applicant shall:

(i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of the applicant who:

(A) demonstrates 6,000 hours of experience in the alarm company business;

(B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm company business or in a construction business; and

(C) passes an examination component established by rule by the commission with the concurrence of the director;

(ii) if a corporation, provide:

(A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall not be required if the stock is publicly listed and traded;

(iii) if a limited liability company, provide:

(A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all individuals owning 5% or more of the equity of the company;

(iv) if a partnership, provide the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(v) if a proprietorship, provide the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of the proprietor, and those responsible management personnel

employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vi) if a trust, provide the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of the trustee, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vii) be of good moral character in that officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(viii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(ix) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

(x) file and maintain with the division evidence of:

(A) comprehensive general liability insurance in form and in amounts to be established by rule by the commission with the concurrence of the director;

(B) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law; and

(C) registration as is required by applicable law with the:

(I) Division of Corporations and Commercial Code;

(II) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(III) State Tax Commission; and

(IV) Internal Revenue Service; and

(xi) meet with the division and board.

(l) Each applicant for licensure as an alarm company agent shall:

(i) submit an application in a form prescribed by the division accompanied by fingerprint cards;

(ii) pay a fee determined by the department under Section 63J-1-504;

(iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(iv) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and

(vi) meet with the division and board if requested by the division or the board.

(m) (i) Each applicant for licensure as an elevator mechanic shall:

(A) provide documentation of experience and education credits of not less than three years work experience in the elevator industry, in construction, maintenance, or service and repair; and

(B) satisfactorily complete a written examination administered by the division established by rule under Section 58-1-203; or

(C) provide certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of this chapter and registered with the United States Department of Labor Bureau Apprenticeship and Training or a state apprenticeship council.

(ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator, the contractor may:

(I) notify the division of the unavailability of licensed personnel; and

(II) request the division issue a temporary elevator mechanic license to an individual certified by the contractor as having an acceptable combination of documented experience and education to perform the work described in this Subsection (3)(m)(ii)(A).

(B) (I) The division may issue a temporary elevator mechanic license to an individual

certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by the appropriate fee as determined by the department under Section 63J-1-504.

(II) The division shall specify the time period for which the license is valid and may renew the license for an additional time period upon its determination that a shortage of licensed elevator mechanics continues to exist.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants as an alarm company or alarm company agent.

(5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure as an alarm company or alarm company agent and each applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the Federal Bureau of Investigation for criminal history information under this section.

(6) The Department of Public Safety shall send to the division:

(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and

(b) the results of the Federal Bureau of Investigation review concerning an applicant in a timely manner after receipt of information from the Federal Bureau of Investigation.

(7) (a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the Federal Bureau of Investigation the costs of records reviews under this section.

(8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the Federal Bureau of Investigation shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.

(9) (a) An application for licensure under this chapter shall be denied if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application;

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application; or

(iv) (A) the applicant includes an individual who was an owner, director, or officer of an unincorporated entity at the time the entity's license under this chapter was revoked; and

(B) the application for licensure is filed within 60 months after the revocation of the unincorporated entity's license.

(b) An application for licensure under this chapter shall be reviewed by the appropriate licensing board prior to approval if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has

served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application; or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application.

(10) (a) (i) A licensee that is an unincorporated entity shall file an ownership status report with the division every 30 days after the day on which the license is issued if the licensee has more than five owners who are individuals who:

(A) own an interest in the contractor that is an unincorporated entity;

(B) own, directly or indirectly, less than an 8% interest, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in the unincorporated entity; and

(C) engage, or will engage, in a construction trade in the state as owners of the contractor described in Subsection (10)(a)(i)(A).

(ii) If the licensee has five or fewer owners described in Subsection (10)(a)(i), the licensee shall provide the ownership status report with an application for renewal of licensure.

(b) An ownership status report required under this Subsection (10) shall:

(i) specify each addition or deletion of an owner:

(A) for the first ownership status report, after the day on which the unincorporated entity is licensed under this chapter; and

(B) for a subsequent ownership status report, after the day on which the previous ownership status report is filed;

(ii) be in a format prescribed by the division that includes for each owner, regardless of the owner's percentage ownership in the unincorporated entity, the information described in Subsection(1)(e)(iv);

(iii) list the name of:

(A) each officer or manager of the unincorporated entity; and

(B) each other individual involved in the operation, supervision, or management of the

unincorporated entity; and

(iv) be accompanied by a fee set by the division in accordance with Section 63J-1-504 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).

(c) The division may, at any time, audit an ownership status report under this Subsection (10):

(i) to determine if financial responsibility has been demonstrated or maintained as required under Section 58-55-306; and

(ii) to determine compliance with Subsection 58-55-501(24), (25), or (27) or Subsection 58-55-502(8) or (9).

(11) (a) An unincorporated entity that provides labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah shall file with the division:

(i) before the individual who owns an interest in the unincorporated entity engages in a construction trade in Utah, a current list of the one or more individuals who hold an ownership interest in the unincorporated entity that includes for each individual:

(A) the individual's name, address, birth date, and Social Security number; and

(B) whether the individual will engage in a construction trade; and

(ii) every 30 days after the day on which the unincorporated entity provides the list described in Subsection (11)(a)(i), an ownership status report containing the information that would be required under Subsection (10) if the unincorporated entity were a licensed contractor.

(b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership status report described in Subsection (11)(a)(ii) [~~or (iii)~~], an unincorporated entity shall pay a fee set by the division in accordance with Section 63J-1-504.

(12) This chapter may not be interpreted to create or support an express or implied independent contractor relationship between an unincorporated entity described in Subsection (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax withholding.

(13) A Social Security number provided under Subsection (1)(e)(iv) is a private record under Subsection 63G-2-302(1)(i).

Section 74. Section **58-60-103** is amended to read:

58-60-103. Licensure required.

(1) An individual shall be licensed under this chapter; Chapter 67, Utah Medical Practice Act; Chapter 68, Utah Osteopathic Medical Practice Act; Chapter 31b, Nurse Practice Act; Chapter 61, Psychologist Licensing Act; or exempted from licensure under this chapter in order to:

(a) engage in, or represent that the individual will engage in, the practice of mental health therapy, clinical social work, certified social work, marriage and family therapy, or clinical mental health counseling; or

(b) practice as, or represent that the individual is, a mental health therapist, clinical social worker, certified social worker, marriage and family therapist, clinical mental health counselor, psychiatrist, psychologist, registered psychiatric mental health nurse specialist, certified psychology resident, associate marriage and family therapist, or associate clinical mental health counselor.

(2) An individual shall be licensed under this chapter or exempted from licensure under this chapter in order to:

(a) engage in, or represent that the individual is engaged in, practice as a social service worker; or

(b) represent that the individual is, or use the title of, a social service worker.

(3) An individual shall be licensed under this chapter or exempted from licensure under this chapter in order to:

(a) engage in, or represent that the individual is engaged in, practice as a substance use disorder counselor; or

(b) represent that the individual is, or use the title of, a substance use disorder counselor.

(4) Notwithstanding the provisions of Subsection 58-1-307(1)(c), an individual shall be certified under this chapter, or otherwise exempted from licensure under this chapter, in order to engage in an internship or residency program of supervised clinical training necessary to meet the requirements for licensure as:

(a) a marriage and family therapist under Part 3, Marriage and Family Therapist Licensing Act; or

(b) a clinical mental health counselor under Part 4, [~~Professional~~] Clinical Mental

Health Counselor Licensing Act.

Section 75. Section **58-67-302.7** is amended to read:

58-67-302.7. Licensing of physician-educators.

(1) As used in this section:

(a) "Foreign country" means a country other than the United States, its territories, or Canada.

(b) "Foreign medical school" means a medical school that is outside the United States, its territories, and Canada.

(2) Notwithstanding any provision of law to the contrary, an individual may receive a type I foreign teaching license if the individual:

(a) submits an application in a form prescribed by the division, which may include:

(i) submission by the applicant of information maintained in a practitioner data bank, as designated by division rule, with respect to the applicant;

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) the applicant's curriculum vitae;

(b) is a graduate of a foreign medical school that is accepted for certification by the Educational Commission for Foreign Medical Graduates;

(c) is licensed in good standing in a foreign country, the United States, its territories, or Canada;

(d) does not have an investigation or action pending against the physician's healthcare license, does not have a healthcare license that was suspended or revoked, and has not surrendered a healthcare license in lieu of disciplinary action, unless:

(i) the license was subsequently reinstated in good standing; or

(ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant and full consideration by the division in collaboration with the board, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents resolution, and the division in collaboration with the board is satisfied that but for the mitigating circumstance, the license would be reinstated;

(e) submits documentation of legal status to work in the United States;

(f) meets at least three of the following qualifications:

(i) (A) published original results of clinical research, within 10 years before the day on which the application is submitted, in a medical journal listed in the Index Medicus or an equivalent scholarly publication; and

(B) submits the publication to the Board in English or in a foreign language with a verifiable, certified English translation;

(ii) held an appointment at a medical school approved by the LCME or at any medical school listed in the World Health Organization directory at the level of associate or full professor, or its equivalent, for at least five years;

(iii) (A) developed a treatment modality, surgical technique, or other verified original contribution to the field of medicine within 10 years before the day on which the application is submitted; and

(B) has the treatment modality, surgical technique, or other verified original contribution attested to by the dean of an LCME accredited school of medicine in Utah;

(iv) actively practiced medicine cumulatively for 10 years; or

(v) is board certified in good standing of a board of the American Board of Medical Specialities or equivalent specialty board;

(g) is of good moral character;

(h) is able to read, write, speak, understand, and be understood in the English language and demonstrates proficiency to the satisfaction of the division in collaboration with the board, if requested;

(i) is invited by an LCME accredited medical school in Utah to serve as a full-time member of the medical school's academic faculty, as evidenced by written certification from:

(i) the dean of the medical school, stating that the applicant has been appointed to a full-time faculty position, that because the applicant has unique expertise in a specific field of medicine the medical school considers the applicant to be a valuable member of the faculty, and that the applicant is qualified by knowledge, skill, and ability to practice medicine in the state; and

(ii) the head of the department to which the applicant is to be appointed, stating that the applicant will be under the direction of the head of the department and will be permitted to

practice medicine only as a necessary part of the applicant's duties, providing detailed evidence of the applicant's qualifications and competence, including the nature and location of the applicant's proposed responsibilities, reasons for any limitations of the applicant's practice responsibilities, and the degree of supervision, if any, under which the applicant will function;

(j) pays a licensing fee set by the division under Section 63J-1-504; and

(k) has practiced medicine for at least 10 years as an attending physician.

(3) Notwithstanding any provision of law to the contrary, an individual may receive a type II foreign teaching license if the individual:

(a) satisfies the requirements of Subsections (2)(a) through (e) and (g) through (j);

(b) has delivered clinical care to patients cumulatively for five years after graduation from medical school; and

(c) (i) will be completing a clinical fellowship while employed at the medical school described in Subsection (2)(i); or

(ii) has already completed a medical residency accredited by the Royal College of Physicians and Surgeons of Canada, the United Kingdom, Australia, or New Zealand, or a comparable accreditation organization as determined by the division in collaboration with the board.

(4) After an initial term of one year, a type I license may be renewed for periods of two years if the licensee continues to satisfy the requirements described in Subsection (2) and completes the division's continuing education renewal requirements established under Section 58-67-303.

(5) A type II license may be renewed on an annual basis, up to four times, if the licensee continues to satisfy the requirements described in Subsection (3) and completes the division's continuing education renewal requirements established under Section 58-67-303.

(6) A license issued under this section:

(a) authorizes the licensee to practice medicine:

(i) within the scope of the licensee's employment at the medical school described in Subsection (2)(i) and the licensee's academic position; and

(ii) at a hospital or clinic affiliated with the medical school described in Subsection (2)(i) for the purpose of teaching, clinical care, or pursuing research;

(b) shall list the limitations described in Subsection (6)(a); and

(c) shall expire on the earlier of:

(i) one year after the day on which the type I or type II license is initially issued, unless the license is renewed;

(ii) for a type I license, two years after the day on which the license is renewed;

(iii) for a type II license, one year after the day on which the license is renewed; or

(iv) the day on which employment at the medical school described in Subsection (2)(i) ends.

(7) A person who holds a type I license for five consecutive years may apply for licensure as a physician and surgeon in this state and shall be licensed if the individual satisfies the requirements described in Subsection (8). If the person fails to obtain licensure as a physician and surgeon in this state, the person may apply for a renewal of the type I license under Subsection (2).

(8) An individual who holds a type I or type II license for five consecutive years is eligible for licensure as a physician and surgeon in this state if the individual:

(a) worked an average of at least 40 hours per month at the level of an attending physician during the time the individual held the type I or type II license;

(b) holds the rank of associate professor or higher at the medical school described in Subsection (2)(i);

(c) obtains certification from the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;

(d) spent a cumulative 20 hours per year while holding a type I or type II license:

(i) teaching or lecturing to medical students or house staff;

(ii) participating in educational department meetings or conferences that are not certified to meet the continuing medical education license renewal requirement; or

(iii) attending continuing medical education classes in addition to the requirements for continuing education described in Subsections (4) and (5);

(e) obtains a passing score on the final step of the licensing examination sequence required by division rule made in collaboration with the board; and

(f) satisfies the requirements described in Subsections 58-67-302(1)(a) through (c) [~~and (h) through (k)~~], (h), and (i).

(9) If a person who holds a type II license fails to obtain licensure as a physician and surgeon in this state after applying under the procedures described in Subsection (8), the person may not:

(a) reapply for or renew a type II license; or

(b) apply for a type I license.

(10) The division or the board may require an applicant for licensure under this section to meet with the board and representatives of the division for the purpose of evaluating the applicant's qualifications for licensure.

(11) The division in collaboration with the board may withdraw a license under this section at any time for material misrepresentation or unlawful or unprofessional conduct.

Section 76. Section **59-2-1017** is amended to read:

59-2-1017. Property tax appeal assistance.

(1) As used in this section:

(a) "Licensed appraiser" means an appraiser licensed in accordance with Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

(b) "Opinion of value" means an estimate of fair market value that:

(i) is made by a licensed appraiser; and

(ii) complies with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board as described in 12 U.S.C. Sec. 3339.

(c) "Present evidence" means to present information:

(i) to a county board of equalization or the commission; and

(ii) related to a property tax appeal made in accordance with this part.

(d) "Price estimate" means an estimate:

(i) of the price that property would sell for; and

(ii) that is not an opinion of value.

(e) "Provide property tax information" means to provide information related to a property tax appeal made in accordance with this part to another person.

(2) Subject to the other provisions of this section, a person may:

(a) present evidence in a property tax appeal on behalf of another person after obtaining permission from that other person; or

(b) provide property tax information to another person.

(3) For purposes of Subsection (2):

(a) only a person who is a licensed appraiser may present or provide an opinion of value; and

(b) only a person who is not a licensed appraiser may present or provide a price estimate.

(4) (a) A licensed appraiser who presents evidence or provides property tax information in accordance with Subsection (2) is subject to Sections 61-2g-304, 61-2g-403, 61-2g-406, and [~~62-2g-407~~] 61-2g-407.

(b) A person who is not a licensed appraiser, who presents evidence or provides property tax information in accordance with Subsection (2):

(i) is subject to Section 61-2g-407; and

(ii) if the person charges a contingent fee, is subject to Section 61-2g-406.

(5) A county board of equalization or the commission may evaluate the reliability or accuracy of evidence presented or property tax information provided in accordance with Subsection (2).

Section 77. Section **59-2-1326** is amended to read:

59-2-1326. Illegal tax -- Injunction to restrain collection.

(1) No injunction may be granted by any court to restrain the collection of any tax or any part of the tax, nor to restrain the sale of any property for the nonpayment of the tax, unless the tax, or some part of the tax sought to be enjoined:

[~~(1)~~] (a) is not authorized by law[~~,~~]; or

[~~(2)~~] (b) is on property which is exempt from taxation.

(2) If the payment of a part of a tax is sought to be enjoined, the other part shall be paid or tendered before any action may be commenced.

Section 78. Section **59-12-353** is amended to read:

59-12-353. Additional municipal transient room tax to repay bonded or other indebtedness.

(1) Subject to the limitations of Subsection (2), the governing body of a municipality may, in addition to the tax authorized under Section 59-12-352, impose a tax of not to exceed .5% on charges for the accommodations and services described in Subsection 59-12-103(1)(i) if the governing body of the municipality:

(a) before January 1, 1996, levied and collected a license fee or tax under Section 10-1-203; and

(b) before January 1, 1997, took official action to obligate the municipality in reliance on the license fees or taxes under Subsection (1)(a)[~~(i)~~] to the payment of debt service on bonds or other indebtedness, including lease payments under a lease purchase agreement.

(2) The governing body of a municipality may impose the tax under this section until the sooner of:

(a) the day on which the following have been paid in full:

(i) the debt service on bonds or other indebtedness, including lease payments under a lease purchase agreement described in Subsection (1) (b); and

(ii) refunding obligations that the municipality incurred as a result of the debt service on bonds or other indebtedness, including lease payments under a lease purchase agreement described in Subsection (1) (b); or

(b) 25 years from the day on which the municipality levied the tax under this section.

Section 79. Section **61-2c-502** is amended to read:

61-2c-502. Additional license fee.

(1) An individual who applies for or renews a license shall pay, in addition to any other fee required under this chapter, a reasonable annual fee:

(a) determined by the division with the concurrence of the commission; and

(b) not to exceed $18.

(2) (a) An entity that applies for or renews an entity license shall pay, in addition to any other fee required under this chapter, a reasonable annual fee:

(i) determined by the division with the concurrence of the commission; and

(ii) not to exceed $25.

(b) This Subsection (2) applies:

(i) notwithstanding that an entity is operating under an assumed name registered with the division as required by Subsection 61-2c-201[~~(9)~~](5); and

(ii) to each branch office of an entity that is licensed under this chapter.

(3) Notwithstanding Section 13-1-2, the following shall be paid into the fund to be used as provided in this part:

(a) a fee provided in this section;

(b) a fee for certifying:

(i) a school as a certified education provider;

(ii) a prelicensing or continuing education course; or

(iii) a prelicensing or continuing education provider as an instructor; and

(c) a civil penalty imposed under this chapter.

(4) If the balance in the fund that is available to satisfy a judgment against a licensee decreases to less than $100,000, the division may make an additional assessment to a licensee to maintain the balance available at $100,000 to satisfy judgments.

Section 80. Section **62A-2-121** is amended to read:

62A-2-121. Access to abuse and neglect information.

(1) For purposes of this section:

(a) "Direct service worker" is as defined in Section 62A-5-101.

(b) "Personal care attendant" is as defined in Section 62A-3-101.

(2) With respect to a licensee, a certified local inspector applicant, a direct service worker, or a personal care attendant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006 and juvenile court records under Subsection 78A-6-323(6), for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to children:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); and

(ii) informing a licensee that a person associated with the licensee:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2);

(b) (i) determining whether a certified local inspector applicant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); and

(ii) informing a local government that a certified local inspector applicant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2);

(c) (i) determining whether a direct service worker:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); or

(d) (i) determining whether a personal care attendant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); and

(ii) informing a person described in Subsections 62A-3-101[~~(8)~~](9)(a)(i) through (iv) that a personal care attendant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2).

(3) Notwithstanding Subsection (2), the department may access the Division of Child and Family Service's Management Information System under Section 62A-4a-1003:

(a) for the purpose of licensing and monitoring foster parents; and

(b) for the purposes described in Subsection 62A-4a-1003(1)(d).

(4) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection (2).

(5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person may have direct access or provide services to children when:

(a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006; or

(b) juvenile court records show that a court made a substantiated finding under Section 78A-6-323, that the person committed a severe type of child abuse or neglect.

Section 81. Section **62A-4a-102** is amended to read:

62A-4a-102. Policy responsibilities of division.

(1) The Division of Child and Family Services, created in Section 62A-4a-103, is responsible for establishing policies for the division, by rule, under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act [~~of 1996~~], regarding abuse, neglect, and dependency proceedings, and domestic violence services. The division is responsible to see that the legislative purposes for the division are carried out.

(2) The division shall:

(a) approve fee schedules for programs within the division;

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish, by rule, policies to ensure that private citizens, consumers, foster parents, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision of an existing policy; and

(c) provide a mechanism for:

(i) systematic and regular review of existing policies, including an annual review of all division policies to ensure that policies comply with the Utah Code; and

(ii) consideration of policy changes proposed by the persons and agencies described in Subsection (2)(b).

(3) (a) The division shall establish rules for the determination of eligibility for services offered by the division in accordance with this chapter.

(b) The division may, by rule, establish eligibility standards for consumers.

(4) The division shall adopt and maintain rules regarding placement for adoption or foster care that are consistent with, and no more restrictive than, applicable statutory provisions.

Section 82. Section **63A-3-502** is amended to read:

63A-3-502. Office of State Debt Collection created -- Duties.

(1) The state and each state agency shall comply with the requirements of this chapter and any rules established by the Office of State Debt Collection.

(2) There is created the Office of State Debt Collection in the Division of Finance.

(3) The office shall:

(a) have overall responsibility for collecting and managing state receivables;

(b) assist the Division of Finance to develop consistent policies governing the collection and management of state receivables;

(c) oversee and monitor state receivables to ensure that state agencies are:

(i) implementing all appropriate collection methods;

(ii) following established receivables guidelines; and

(iii) accounting for and reporting receivables in the appropriate manner;

(d) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;

(e) provide information, training, and technical assistance to each state agency on various collection-related topics;

(f) write an inclusive receivables management and collection manual for use by each state agency;

(g) prepare quarterly and annual reports of the state's receivables;

(h) create or coordinate a state accounts receivable database;

(i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;

(j) identify any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;

(k) coordinate information, systems, and procedures between each state agency to maximize the collection of past-due accounts receivable;

(l) establish an automated cash receipt process between each state agency;

(m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;

(n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or its designee;

(o) be a real party in interest for an account receivable referred to the office by any state agency or for any restitution to victims referred to the office by a court; and

(p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.

(4) The office may:

(a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;

(b) collect accounts receivables for higher education entities, if the higher education entity agrees;

(c) prepare a request for proposal for consulting services to:

(i) analyze the state's receivable management and collection efforts; and

(ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;

(d) contract with private or state agencies to collect past-due accounts;

(e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;

(f) obtain access to records and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206, including the financial disclosure form described in Section [~~78-38a-204~~] 77-38a-204;

(g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:

(i) a fee to cover the administrative costs of collection, on accounts administered by the office;

(ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;

(iii) an interest charge that is:

(A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or

(B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and

(iv) fees to collect accounts receivable for higher education;

(h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;

(i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;

(j) file a satisfaction of judgment in the court by following the procedures and requirements of the Utah Rules of Civil Procedure;

(k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary;

(l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record; and

(m) enter into written agreements with other governmental agencies to obtain information for the purpose of collecting state accounts receivable and restitution for victims.

(5) The office shall ensure that:

(a) a record obtained by the office or a private sector vendor as referred to in Subsection (4)(l):

(i) is used only for the limited purpose of collecting accounts receivable; and

(ii) is subject to federal, state, and local agency records restrictions; and

(b) any person employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(l) is subject to:

(i) the same duty of confidentiality with respect to the record imposed by law on officers and employees of the state agency from which the record was obtained; and

(ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.

(6) (a) The office shall collect accounts receivable ordered by a court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 76-3-201.1(5)(h) or (8).

(b) The office may not assess the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

(7) The office shall require a state agency to:

(a) transfer collection responsibilities to the office or its designee according to time limits established by the office;

(b) make annual progress towards implementing collection techniques and improved accounts receivable collections;

(c) use the state's accounts receivable system or develop systems that are adequate to properly account for and report their receivables;

(d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;

(e) provide internal accounts receivable training to staff involved in the management and collection of receivables as a supplement to statewide training;

(f) bill for and make initial collection efforts of its receivables up to the time the accounts must be transferred; and

(g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.

(8) The office shall use the information provided by the agencies and any additional information from the office's records to compile a one-page summary report of each agency.

(9) The summary shall include:

(a) the type of revenue that is owed to the agency;

(b) any attempted collection activity; and

(c) any costs incurred in the collection process.

(10) The office shall annually provide copies of each agency's summary to the governor and to the Legislature.

Section 83. Section **63G-2-202** is amended to read:

63G-2-202. Access to private, controlled, and protected documents.

(1) Upon request, and except as provided in Subsection (11)(a), a governmental entity shall disclose a private record to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the

record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record;

(ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to:

(i) court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

(A) a court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that:

(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

(iii) (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

(B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from:

(A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or

(B) using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(d) A governmental entity may not disclose or authorize disclosure of a private record

for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(u).

(9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:

(i) private under Section 63G-2-302; or

(ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(b) Under Subsection 63G-2-403(11)(b), the records committee may require the disclosure to persons other than those specified in this section of records that are:

(i) private under Section 63G-2-302;

(ii) controlled under Section 63G-2-304; or

(iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(8), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

(10) A record contained in the Management Information System, created in Section 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect, or dependency.

(11) (a) A private record described in Subsection 63G-2-302[~~(2)~~](1)(g) may only be disclosed as provided in Subsection (1)(e).

(b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

(12) (a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:

(i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

(ii) Subsections 62A-16-302(1) and (6).

(b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

Section 84. Section **63G-2-703** is amended to read:

63G-2-703. Applicability to the Legislature.

(1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.

(2) (a) The Legislature and its staff offices are not subject to Section 63G-2-203 or to Part 4, Appeals, Part 5, State Records Committee, or Part 6, Collection of Information and Accuracy of Records.

(b) The Legislature is subject to only the following sections in [~~Part 9, Archives and Records Service~~] Title 63A, Chapter 12, Public Records Management Act: Sections 63A-12-102[~~;~~] and 63A-12-106[~~, and 63G-2-310~~].

(3) The Legislature, through the Legislative Management Committee:

(a) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and

(b) may establish an appellate board to hear appeals from denials of access.

(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.

(5) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the Legislature; and

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, [~~Part 1, Archives and Records Service~~] Public Records Management Act.

Section 85. Section **63G-6a-303** is amended to read:

63G-6a-303. Duties and authority of chief procurement officer.

(1) Except as otherwise specifically provided in this chapter, the chief procurement officer serves as the central procurement officer of the state and shall:

(a) adopt office policies governing the internal functions of the division;

(b) procure or supervise each procurement over which the chief procurement officer has authority;

(c) establish and maintain programs for the inspection, testing, and acceptance of each procurement item over which the chief procurement officer has authority;

(d) prepare statistical data concerning each procurement and procurement usage of a state procurement unit;

(e) ensure that:

(i) before approving a procurement not covered by an existing statewide contract for information technology or telecommunications supplies or services, the chief information officer and the agency have stated in writing to the division that the needs analysis required in Section 63F-1-205 was completed, unless the procurement is approved in accordance with Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program; and

(ii) the oversight authority required by Subsection [~~(5)(a)~~] (1)(e)(i) is not delegated outside the division;

(f) provide training to procurement units and to persons who do business with procurement units;

(g) if the chief procurement officer determines that a procurement over which the chief procurement officer has authority is out of compliance with this chapter or board rules:

(i) correct or amend the procurement to bring it into compliance; or

(ii) cancel the procurement, if:

(A) it is not feasible to bring the procurement into compliance; or

(B) the chief procurement officer determines that it is in the best interest of the state to cancel the procurement; and

(h) if the chief procurement officer determines that a contract over which the chief procurement officer has authority is out of compliance with this chapter or board rules, correct or amend the contract to bring it into compliance or cancel the contract:

(i) if the chief procurement officer determines that correcting, amending, or canceling the contract is in the best interest of the state; and

(ii) after consultation with the attorney general's office.

(2) The chief procurement officer may:

(a) correct, amend, or cancel a procurement as provided in Subsection (1)(g) at any stage of the procurement process; and

(b) correct, amend, or cancel a contract as provided in Subsection (1)(h) at any time during the term of the contract.

Section 86. Section **63G-6a-904** is amended to read:

63G-6a-904. Debarment or suspension from consideration for award of contracts -- Process -- Causes for debarment -- Appeal.

(1) (a) Subject to Subsection (1)(b), the chief procurement officer or the head of a procurement unit with independent procurement authority may:

(i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or

(ii) suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity that might lead to debarment.

(b) Before debarring or suspending a person under Subsection (1)(a), the chief procurement officer or head of a procurement unit with independent procurement authority shall:

(i) consult with:

(A) the procurement unit involved in the matter for which debarment or suspension is sought; and

(B) the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch;

(ii) give the person at least 10 days' prior written notice of:

(A) the reasons for which debarment or suspension is being considered; and

(B) the hearing under Subsection (1)(b)(iii); and

(iii) hold a hearing in accordance with Subsection (1)(c).

(c) (i) At a hearing under Subsection (1)(b)(iii), the chief procurement officer or head of a procurement unit with independent procurement authority may:

(A) subpoena witnesses and compel their attendance at the hearing;

(B) subpoena documents for production at the hearing;

(C) obtain additional factual information; and

(D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the procurement unit, or others to assist the chief procurement officer or head of a procurement unit with independent procurement authority to make a decision on the proposed debarment or suspension.

(ii) The Rules of Evidence do not apply to a hearing under Subsection (1)(b)(iii).

(iii) The chief procurement officer or head of a procurement unit with independent

procurement authority shall:

(A) record a hearing under Subsection (1)(b)(iii);

(B) preserve all records and other evidence relied upon in reaching a decision until the decision becomes final;

(C) for an appeal of a debarment or suspension by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the procurement policy board chair a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1702 or after receiving a request from the procurement policy board chair; and

(D) for an appeal of a debarment or suspension by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the Utah Court of Appeals a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1802.

(iv) The holding of a hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)[~~(b)~~](c)(v) does not affect a person's right to later question or challenge the jurisdiction of the chief procurement officer or head of a procurement unit with independent procurement authority to hold a hearing or issue a decision.

(v) The chief procurement officer or head of a procurement unit with independent procurement authority shall:

(A) promptly issue a written decision regarding a proposed debarment or suspension, unless the matter is settled by mutual agreement; and

(B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.

(vi) A written decision under Subsection (1)[~~(b)~~](c)(v) shall:

(A) state the reasons for the debarment or suspension, if debarment or suspension is ordered;

(B) inform the person who is debarred or suspended of the right to judicial or administrative review as provided in this chapter; and

(C) indicate the amount of the security deposit or bond required under Section

63G-6a-1703 and how that amount was calculated.

(vii) (A) A decision of debarment or suspension issued by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1702.

(B) A decision of debarment or suspension issued by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1802.

(2) A suspension under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch, remain in effect until after the trial of the suspended person.

(3) The causes for debarment include the following:

(a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor for the procurement unit;

(c) conviction under state or federal antitrust statutes;

(d) failure without good cause to perform in accordance with the terms of the contract;

(e) a violation of this chapter; or

(f) any other cause that the chief procurement officer or the head of a procurement unit with independent procurement authority determines to be so serious and compelling as to affect responsibility as a contractor for the procurement unit, including debarment by another governmental entity.

(4) A person who is debarred or suspended under this section may appeal the

debarment or suspension:

(a) as provided in Section 63G-6a-1702, if the debarment or suspension is by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district; or

(b) as provided in Section 63G-6a-1802, if the debarment or suspension is by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district.

(5) A procurement unit may consider a cause for debarment under Subsection (3) as the basis for determining that a person responding to a solicitation is not responsible:

(a) independent of any effort or proceeding under this section to debar or suspend the person; and

(b) even if the procurement unit does not choose to seek debarment or suspension.

Section 87. Section **63G-6a-1702** is amended to read:

63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of procurement appeals panel -- Proceedings.

(1) This part applies to all procurement units other than:

(a) a legislative procurement unit;

(b) a judicial procurement unit;

(c) a local government procurement unit; or

(d) a public transit district.

(2) (a) Subject to Section 63G-6a-1703, a party to a protest involving a procurement unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) may appeal the protest decision to the board by filing a written notice of appeal with the chair of the board within seven days after:

(i) the day on which the written decision described in Section 63G-6a-1603 is:

(A) personally served on the party or the party's representative; or

(B) emailed or mailed to the address or email address of record provided by the party under Subsection 63G-6a-1602[~~(3)~~](2); or

(ii) the day on which the 30-day period described in Subsection 63G-6a-1603[~~(7)~~](9) ends, if a written decision is not issued before the end of the 30-day period.

(b) A person appealing a debarment or suspension of a procurement unit other than a

procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal with the chair of the board no later than seven days after the debarment or suspension.

(c) A notice of appeal under Subsection (2)(a) or (b) shall:

(i) include the address of record and email address of record of the party filing the notice of appeal; and

(ii) be accompanied by a copy of any written protest decision or debarment or suspension order.

(3) A person may not base an appeal of a protest under this section on a ground not specified in the person's protest under Section 63G-6a-1602.

(4) A person may not appeal from a protest described in Section 63G-6a-1602, unless:

(a) a decision on the protest has been issued; or

(b) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603[~~(7)~~](9), or a longer period agreed to by the parties, has passed.

(5) The chair of the board or a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action complained of:

(a) shall, within seven days after the day on which the chair receives a timely written notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section 63G-6a-1703 have been met, appoint:

(i) a procurement appeals panel to hear and decide the appeal, consisting of at least three individuals, each of whom is:

(A) a member of the board; or

(B) a designee of a member appointed under Subsection [~~(4)~~] (5)(a)(i)(A), if the designee is approved by the chair; and

(ii) one of the members of the procurement appeals panel to be the chair of the panel;

(b) may:

(i) appoint the same procurement appeals panel to hear more than one appeal; or

(ii) appoint a separate procurement appeals panel for each appeal;

(c) may not appoint a person to a procurement appeals panel if the person is employed by the procurement unit responsible for the solicitation, contract award, or other action complained of; and

(d) shall, at the time the procurement appeals panel is appointed, provide appeals panel

members with a copy of the protest officer's written decision and all other records and other evidence that the protest officer relied on in reaching the decision.

(6) A procurement appeals panel described in Subsection (5) shall:

(a) consist of an odd number of members;

(b) conduct an informal proceeding on the appeal within 60 days after the day on which the procurement appeals panel is appointed:

(i) unless all parties stipulate to a later date; and

(ii) subject to Subsection (8);

(c) at least seven days before the proceeding, mail, email, or hand-deliver a written notice of the proceeding to the parties to the appeal; and

(d) within seven days after the day on which the proceeding ends:

(i) issue a written decision on the appeal; and

(ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.

(7) (a) The deliberations of a procurement appeals panel may be held in private.

(b) If the procurement appeals panel is a public body, as defined in Section 52-4-103, the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(8) A procurement appeals panel may continue a procurement appeals proceeding beyond the 60-day period described in Subsection (6)(b) if the procurement appeals panel determines that the continuance is in the interests of justice.

(9) A procurement appeals panel:

(a) shall, subject to Subsection (9)(c), consider the appeal based solely on:

(i) the protest decision;

(ii) the record considered by the person who issued the protest decision; and

(iii) if a protest hearing was held, the record of the protest hearing;

(b) may not take additional evidence;

(c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions and receive responses regarding the appeal, the protest decision, or the record in order to assist the panel to understand the appeal, the protest decision, and the record; and

(d) shall uphold the decision of the protest officer, unless the decision is arbitrary and

capricious or clearly erroneous.

(10) If a procurement appeals panel determines that the decision of the protest officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

(a) shall remand the matter to the protest officer, to cure the problem or render a new decision;

(b) may recommend action that the protest officer should take; and

(c) may not order that:

(i) a contract be awarded to a certain person;

(ii) a contract or solicitation be cancelled; or

(iii) any other action be taken other than the action described in Subsection (10)(a).

(11) The board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:

(a) expedited proceedings; and

(b) electronic participation in the proceedings by panel members and participants.

(12) The Rules of Evidence do not apply to an appeals proceeding.

Section 88. Section **63G-10-403** is amended to read:

63G-10-403. Department of Transportation bid or request for proposals protest settlement agreement approval and review.

(1) As used in this section:

(a) "Department" means the Department of Transportation created in Section 72-1-201.

(b) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.

(2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a bid or request for proposal protest in accordance with this section.

(3) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[~~(5)~~](4), that might cost government entities more than $100,000 to implement shall be presented to the Transportation Commission for approval or rejection.

(4) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[~~(5)~~](4), that might cost government entities more than $500,000 to implement shall be presented:

(a) to the Transportation Commission for approval or rejection; and

(b) to the governor for approval or rejection.

(5) (a) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[~~(5)~~](4), that might cost government entities more than $1,000,000 to implement shall be presented:

(i) to the Transportation Commission for approval or rejection;

(ii) to the governor for approval or rejection; and

(iii) if the settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.

(b) The Legislative Management Committee may recommend approval or rejection of the settlement agreement.

(6) (a) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[~~(5)~~](4), that might cost government entities more than $100,000 to implement until the Transportation Commission has approved the agreement.

(b) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[~~(5)~~](4), that might cost government entities more than $500,000 to implement until the Transportation Commission and the governor have approved the agreement.

(c) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[~~(5)~~](4), that might cost government entities more than $1,000,000 to implement until:

(i) the Transportation Commission has approved the agreement;

(ii) the governor has approved the agreement; and

(iii) the Legislative Management Committee has reviewed the agreement.

Section 89. Section **63G-12-102** is amended to read:

63G-12-102. Definitions.

As used in this chapter:

(1) "Basic health insurance plan" means a health plan that is actuarially equivalent to a federally qualified high deductible health plan.

(2) "Department" means the Department of Public Safety created in Section 53-1-103.

(3) "Employee" means an individual employed by an employer under a contract for hire.

(4) "Employer" means a person who has one or more employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.

(5) "E-verify program" means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. Sec. 1324a, known as the e-verify program;

(6) "Family member" means for an undocumented individual:

(a) a member of the undocumented individual's immediate family;

(b) the undocumented individual's grandparent;

(c) the undocumented individual's sibling;

(d) the undocumented individual's grandchild;

(e) the undocumented individual's nephew;

(f) the undocumented individual's niece;

(g) a spouse of an individual described in this Subsection (6); or

(h) an individual who is similar to one listed in this Subsection (6).

(7) "Federal SAVE program" means the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the Department of Homeland Security.

(8) "Guest worker" means an undocumented individual who holds a guest worker permit.

(9) "Guest worker permit" means a permit issued in accordance with Section 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section 63G-12-205.

(10) "Immediate family" means for an undocumented individual:

(a) the undocumented individual's spouse; or

(b) a child of the undocumented individual if the child is:

(i) under 21 years of age; and

(ii) unmarried.

(11) "Immediate family permit" means a permit issued in accordance with Section 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section 63G-12-206.

(12) "Permit" means a permit issued under Part 2, Guest Worker Program, and includes:

(a) a guest worker permit; and

(b) an immediate family permit.

(13) "Permit holder" means an undocumented individual who holds a permit.

(14) "Private employer" means an employer who is not the federal government or a public employer.

[~~(17)~~] (15) "Program" means the Guest Worker Program described in Section 63G-12-201.

[~~(15)~~] (16) "Program start date" means the day on which the department is required to implement the program under Subsection 63G-12-202(3).

[~~(16)~~] (17) "Public employer" means an employer that is:

(a) the state of Utah or any administrative subunit of the state;

(b) a state institution of higher education, as defined in Section 53B-3-102;

(c) a political subdivision of the state including a county, city, town, school district, local district, or special service district; or

(d) an administrative subunit of a political subdivision.

(18) "Relevant contact information" means the following for an undocumented individual:

(a) the undocumented individual's name;

(b) the undocumented individual's residential address;

(c) the undocumented individual's residential telephone number;

(d) the undocumented individual's personal email address;

(e) the name of the person with whom the undocumented individual has a contract for hire;

(f) the name of the contact person for the person listed in Subsection (18)(e);

(g) the address of the person listed in Subsection (18)(e);

(h) the telephone number for the person listed in Subsection (18)(e);

(i) the names of the undocumented individual's immediate family members;

(j) the names of the family members who reside with the undocumented individual; and

(k) any other information required by the department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act.

(19) "Restricted account" means the Immigration Act Restricted Account created in Section 63G-12-103.

(20) "Serious felony" means a felony under:

(a) Title 76, Chapter 5, Offenses Against the Person;

(b) Title 76, Chapter [~~5a~~] 5b, Sexual Exploitation [~~of Children~~] Act;

(c) Title 76, Chapter 6, Offenses Against Property;

(d) Title 76, Chapter 7, Offenses Against the Family;

(e) Title 76, Chapter 8, Offenses Against the Administration of Government;

(f) Title 76, Chapter 9, Offenses Against Public Order and Decency; and

(g) Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals.

(21) (a) "Status verification system" means an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. Sec. 1373, to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision for a purpose authorized under this section.

(b) "Status verification system" includes:

(i) the e-verify program;

(ii) an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986;

(iii) the Social Security Number Verification Service or similar online verification process implemented by the United States Social Security Administration; or

(iv) an independent third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in Subsection (21)(b)(i), (ii), or (iii).

(22) "Unauthorized alien" is as defined in 8 U.S.C. Sec. 1324a(h)(3).

(23) "Undocumented individual" means an individual who:

(a) lives or works in the state; and

(b) is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. with regard to presence in the United States.

(24) "U-verify program" means the verification procedure developed by the department in accordance with Section 63G-12-210.

Section 90. Section **63H-1-701** is amended to read:

63H-1-701. Annual authority budget -- Fiscal year -- Public hearing required -- Auditor forms -- Requirement to file form.

(1) The authority shall prepare and its board adopt an annual budget of revenues and expenditures for the authority for each fiscal year.

(2) Each annual authority budget shall be adopted before June 22.

(3) The authority's fiscal year shall be the period from July 1 to the following June 30.

(4) (a) Before adopting an annual budget, the authority board shall hold a public hearing on the annual budget.

(b) The authority shall provide notice of the public hearing on the annual budget by:

(i) publishing notice:

(A) at least once in a newspaper of general circulation within the authority boundaries, one week before the public hearing; and

(B) on the Utah Public Notice Website created in Section 63F-1-701, for at least one week immediately before the public hearing; or

(ii) if there is no newspaper of general circulation within the authority boundaries as described in Subsection (4)[~~(a)~~](b)(i)(A), posting a notice of the public hearing in at least three public places within the authority boundaries.

(c) The authority shall make the annual budget available for public inspection at least three days before the date of the public hearing.

(5) The state auditor shall prescribe the budget forms and the categories to be contained in each authority budget, including:

(a) revenues and expenditures for the budget year;

(b) legal fees; and

(c) administrative costs, including rent, supplies, and other materials, and salaries of authority personnel.

(6) (a) Within 30 days after adopting an annual budget, the authority board shall file a copy of the annual budget with the auditor of the county in which the authority is located, the State Tax Commission, the state auditor, the State Board of Education, and each taxing entity that levies a tax on property from which the authority collects tax increment.

(b) The requirement of Subsection (6)(a) to file a copy of the annual budget with the state as a taxing entity is met if the authority files a copy with the State Tax Commission and the state auditor.

Section 91. Section **63H-7-103** is amended to read:

63H-7-103. Definitions.

As used in this chapter:

(1) "Authority" means the Utah Communications Authority, an independent state agency created in Section [~~67H-7-201~~] 63H-7-201.

(2) "Board" means the Utah Communications Authority Board created in Section [~~67H-7-203~~] 63H-7-203.

(3) "Bonds" means bonds, notes, certificates, debentures, contracts, lease purchase agreements, or other evidences of indebtedness or borrowing issued or incurred by the authority pursuant to this chapter.

(4) "Communications network" means:

(a) a regional or statewide public safety governmental communications network and related facilities, including real property, improvements, and equipment necessary for the acquisition, construction, and operation of the services and facilities; and

(b) 911 emergency services, including radio communications, microwave connectivity, FirstNet coordination, and computer aided dispatch system.

(5) "FirstNet" means the First Responder Network Authority created by Congress in the Middle Class Tax Relief and Job Creation Act of 2012.

(6) "Lease" means any lease, lease purchase, sublease, operating, management, or similar agreement.

(7) "Local entity" means a county, city, town, local district, special service district, or interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act.

(8) "Member" means a public agency which:

(a) adopts a membership resolution to be included within the authority; and

(b) submits an originally executed copy of an authorizing resolution to the authority's office.

(9) "Member representative" means a person or that person's designee appointed by the governing body of each member.

(10) "Public agency" means any political subdivision of the state, including cities, towns, counties, school districts, local districts, and special service districts, dispatched by a public safety answering point.

(11) "Public safety answering point" means an organization, entity, or combination of entities which have joined together to form a central answering point for the receipt, management, and dissemination to the proper responding agency, of emergency and nonemergency communications, including 911 communications, police, fire, emergency medical, transportation, parks, wildlife, corrections, and any other governmental communications.

(12) "State" means the state of Utah.

(13) "State representative" means the six appointees of the governor or their designees and the Utah State Treasurer or his designee.

Section 92. Section **63I-1-213** is amended to read:

63I-1-213. Repeal dates, Title 13.

[~~(1) Subsections 13-38a-102(3) and 13-38a-102(4) are repealed June 30, 2014.~~]

[~~(2) Sections 13-38a-301 and 13-38a-302 are repealed June 30, 2014.~~]

Section 93. Section **63I-1-226** is amended to read:

63I-1-226. Repeal dates, Title 26.

(1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2015.

(2) Section 26-10-11 is repealed July 1, 2015.

[~~(3) Section 26-18-12, Expansion of 340B drug pricing programs, is repealed July 1, 2013.~~]

[~~(4)~~] (3) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed July 1, 2018.

[~~(5) Section 26-21-211 is repealed July 1, 2013.~~]

[~~(6)~~] (4) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.

[~~(7)~~] (5) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1, 2016.

[~~(8)~~] (6) Section 26-38-2.5 is repealed July 1, 2017.

[~~(9)~~] (7) Section 26-38-2.6 is repealed July 1, 2017.

[~~(10)~~] (8) Title 26, Chapter 56, Hemp Extract Registration Act, is repealed July 1, 2016.

Section 94. Section **63I-1-235** is amended to read:

63I-1-235. Repeal dates, Title 35A.

(1) Title 35A, Utah Workforce Services Code, is repealed July 1, 2015.

(2) Title 35A, Chapter 8, Part 7, Utah Housing Corporation Act, is repealed July 1, 2016.

[~~(3) Title 35A, Chapter 8, Part 18, Transitional Housing and Community Development Advisory Council, is repealed July 1, 2014.~~]

[~~(4)~~] (3) Title 35A, Chapter 11, Women in the Economy Commission Act, is repealed July 1, 2016.

Section 95. Section **63I-2-219** is amended to read:

63I-2-219. Repeal dates -- Title 19.

[~~(1) Section 19-6-405.3 is repealed July 1, 2014.~~]

[~~(2) Section 19-6-405.4 is repealed July 1, 2014.~~]

Section 96. Section **63I-2-253** is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

[~~(1) Section 53A-1-402.7 is repealed July 1, 2014.~~]

[~~(2)~~] (1) Section 53A-1-403.5 is repealed July 1, 2017.

[~~(3)~~] (2) Subsection 53A-1-410(5) is repealed July 1, 2015.

[~~(4)~~] (3) Section 53A-1-411 is repealed July 1, 2016.

[~~(5)~~] (4) Section 53A-1a-513.5 is repealed July 1, 2017.

[~~(6)~~] (5) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.

[~~(7)~~] (6) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is

repealed July 1, 2017.

[~~(8)~~] (7) Section 53A-17a-169 is repealed July 1, 2017.

Section 97. Section **63I-2-258** is amended to read:

63I-2-258. Repeal dates -- Title 58.

[~~(1) Subsection 58-72-201(1)(b) is repealed July 1, 2014.~~]

[~~(2)~~] Subsection 58-17b-605.5(8) is repealed on May 15, 2015.

Section 98. Section **63I-2-262** is amended to read:

63I-2-262. Repeal dates, Title 62A.

[~~Section 62A-4a-122 is repealed January 1, 2014.~~]

Section 99. Section **63I-2-263** is amended to read:

63I-2-263. Repeal dates, Title 63A to Title 63M.

[~~(1) Section 63A-1-115 is repealed on July 1, 2014.~~]

[~~(2)~~] (1) Section 63C-9-501.1 is repealed on July 1, 2015.

[~~(3) Subsection 63J-1-218(3) is repealed on December 1, 2013.~~]

[~~(4) Subsection 63J-1-218(4) is repealed on December 1, 2013.~~]

[~~(5) Section 63M-1-207 is repealed on December 1, 2014.~~]

[~~(6)~~] (2) Subsection 63M-1-903(1)(d) is repealed on July 1, 2015.

[~~(7) Subsection 63M-1-1406(9) is repealed on January 1, 2015.~~]

Section 100. Section **63I-5-302** is amended to read:

63I-5-302. Agency head -- Powers and duties.

If an agency has an internal audit program, and the agency's appointing authority has not established an audit committee, the agency head shall assume the audit committee powers and duties described in Subsection [~~63I-5-303~~] 63I-5-301(3).

Section 101. Section **63M-1-3208** is amended to read:

63M-1-3208. STEM education endorsements and incentive program.

(1) The State Board of Education shall collaborate with the STEM Action Center to:

(a) develop STEM education endorsements; and

(b) create and implement financial incentives for:

(i) an educator to earn an elementary or secondary STEM education endorsement described in Subsection (1)(a); and

(ii) a school district or a charter school to have STEM endorsed educators on staff.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules to establish how a STEM education endorsement [~~incentive~~] described in Subsection (1)(a) will be valued on a salary scale for educators.

Section 102. Section **65A-7-5** is amended to read:

65A-7-5. Surface leases -- Procedures for issuing leases -- Leases for the construction of a highway facility.

(1) The division may issue surface leases of state lands for any period up to 99 years.

(2) This section does not apply to leases for oil and gas, grazing, or mining purposes.

(3) The division shall disclose any known geologic hazard affecting leased property.

(4) (a) (i) Surface leases may be entered into by negotiation, public auction, or other public competitive bidding process as determined by rules of the division.

(ii) Requests for proposals (RFP) on state lands may be offered by the division after public notice.

(b) (i) A notice of an invitation for bids or a public auction shall, prior to the auction or acceptance of a bid, be published at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the lease is offered.

(ii) The notice shall be sent, by certified mail, at least 30 days prior to the auction or acceptance of a bid, to each person who owns property adjoining the state lands offered for lease.

(c) (i) Surface leases entered into through negotiation shall be published in the manner set forth in Subsection (4)(b) 30 days prior to final approval.

(ii) The notice shall include, at a minimum, a general description of the lands proposed for lease and the type of lease.

(5) (a) The division may not issue a lease for the construction of a highway facility over sovereign lakebed lands unless the applicant for the lease submits an approval for the construction of a highway facility over sovereign lakebed lands from the Transportation Commission in accordance with Section 72-6-303 with the application for the lease.

(b) The division shall consider the information and analysis provided by the Transportation Commission under Section 72-6-303 when making its determination as to whether to issue a lease for the construction of a highway facility over sovereign lakebed lands.

(c) A lease for the construction of a highway facility over sovereign lakebed lands:

(i) may include an option to renew the lease upon expiration; and

(ii) shall include a provision that requires that at the termination of the lease:

(A) the ownership of the highway facility shall revert to the state;

(B) the highway facility shall be in a state of proper maintenance as outlined in the agreement under Subsection 72-6-303[~~(4)~~](5)(e) and determined by the Department of Transportation; and

(C) the highway facility shall be returned to the Department of Transportation in satisfactory condition at no further cost to the Department of Transportation, in a condition of good repair.

(d) The requirements under this Subsection (5) apply to all pending and future applications for a lease for the construction of a highway facility over sovereign lakebed lands.

Section 103. Section **67-5-3** is amended to read:

67-5-3. "Agency" defined -- Performance of legal services for agencies -- Billing.

(1) As used in this act, "agency" means a department, division, agency, commission, board, council, committee, authority, institution, or other entity within the state government of Utah.

(2) (a) The attorney general may assign [~~his legal assistants~~] a legal assistant to perform legal services for any agency of state government. [~~He~~]

(b) The attorney general shall bill that agency for the legal services performed, if:

[~~(1)~~] (i) the agency [~~so~~] billed receives federal funds to pay for the legal services rendered[~~;~~]; or [~~if (2)~~]

(ii) the agency collects funds from any other source in the form of fees, costs, interest, fines, penalties, forfeitures, or other proceeds reserved or designated for the payment of legal fees sufficient to pay for all or a portion of the legal services rendered[~~; however, the~~].

(c) An agency may deduct any unreimbursed costs and expenses incurred by the agency in connection with the legal services rendered. [~~As used in this act "agency" means any department, division, agency, commission, board, council, committee, authority, institution, or other entity within the state government of Utah.~~]

Section 104. Section **67-19a-202** is amended to read:

67-19a-202. Powers -- Scope of authority.

(1) (a) The office shall serve as the final administrative body to review a grievance

from a career service employee and an agency of a decision regarding:

(i) a dismissal;

(ii) a demotion;

(iii) a suspension;

(iv) a reduction in force;

(v) a dispute concerning abandonment of position;

(vi) a wage grievance if an employee is not placed within the salary range of the employee's current position;

(vii) a violation of a rule adopted under Chapter 19, Utah State Personnel Management Act; or

(viii) except as provided by Subsection (1)[~~(b)~~](c)(iii), equitable administration of the following benefits:

(A) long-term disability insurance;

(B) medical insurance;

(C) dental insurance;

(D) post-retirement health insurance;

(E) post-retirement life insurance;

(F) life insurance;

(G) defined contribution retirement;

(H) defined benefit retirement; and

(I) a leave benefit.

(b) The office shall serve as the final administrative body to review a grievance by a reporting employee alleging retaliatory action.

(c) The office may not review or take action on:

(i) a personnel matter not listed in Subsection (1)(a) or (b);

(ii) a grievance listed in Subsection (1)(a) or (b) that alleges discrimination or retaliation related to a claim of discrimination that is a violation of a state or federal law for which review and action by the office is preempted by state or federal law; or

(iii) a grievance related to a claim for which an administrative review process is provided by statute and administered by:

(A) the Utah State Retirement Systems under Title 49, Utah State Retirement and

Insurance Benefit Act;

(B) the Public Employees' Benefit and Insurance Program under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or

(C) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.

(2) The time limits established in this chapter supersede the procedural time limits established in Title 63G, Chapter 4, Administrative Procedures Act.

Section 105. Section **67-19a-402.5** is amended to read:

67-19a-402.5. Procedural steps to be followed by reporting employee alleging retaliatory action.

(1) A reporting employee who desires to assert an administrative grievance of retaliatory action:

(a) shall submit the grievance in writing within 20 days after the day on which the retaliatory action occurs;

(b) is not required to comply with Section 63G-7-402 to file the grievance; and

(c) is subject to the provisions of Section [~~67-24-4~~] 67-21-4.

(2) (a) When a reporting employee files a grievance with the administrator under Subsection (1), the administrator shall initially determine:

(i) whether the reporting employee is entitled, under this chapter and Chapter 21, Utah Protection of Public Employees Act, to bring the grievance and use the grievance procedure;

(ii) whether the office has authority to review the grievance;

(iii) whether, if the alleged grievance were found to be true, the reporting employee would be entitled to relief under Subsection 67-21-3.5(2); and

(iv) whether the reporting employee has been directly harmed.

(b) To make the determinations described in Subsection (2)(a), the administrator may:

(i) hold an initial hearing, where the parties may present oral arguments, written arguments, or both; or

(ii) conduct an administrative review of the grievance.

(3) (a) If the administrator holds an initial hearing, the administrator shall issue a written decision within 15 days after the day on which the hearing is adjourned.

(b) If the administrator chooses to conduct an administrative review of the grievance,

the administrator shall issue the written decision within 15 days after the day on which the administrator receives the grievance.

(4) (a) If the administrator determines the office has authority to review the grievance, the administrator shall provide for an evidentiary hearing in accordance with Section 67-19a-404.

(b) The administrator may dismiss the grievance, without holding a hearing or taking evidence, if the administrator:

(i) finds that, even if the alleged grievance were found to be true, the reporting employee would not be entitled to relief under Subsection 67-21-3.5(2); and

(ii) provides the administrator's findings, in writing, to the reporting employee.

(c) The office shall comply with Chapter 21, Utah Protection of Public Employees Act, in taking action under this section.

(5) A decision reached by the office in reviewing a retaliatory action grievance from a reporting employee may be appealed directly to the Utah Court of Appeals.

(6) (a) Except as provided in Subsection (6)(b), an appellate court may award costs and attorney fees, accrued at the appellate court level, to a prevailing employee.

(b) A court may not order the office to pay costs or attorney fees under this section.

Section 106. Section **70A-2-601** is amended to read:

70A-2-601. Buyer's rights on improper delivery.

Subject to the provisions of this chapter on breach in installment contracts (Section 70A-2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 70A-2-718 and 70A-2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

[~~(a)~~] (1) reject the whole; [~~or~~]

[~~(b)~~] (2) accept the whole; or

[~~(c)~~] (3) accept any commercial unit or units and reject the rest.

Section 107. Section **70A-2-610** is amended to read:

70A-2-610. Anticipatory repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

[~~(a)~~] (1) for a commercially reasonable time await performance by the repudiating party; [~~or~~]

[~~(b)~~] (2) resort to any remedy for breach (Section 70A-2-703 or Section 70A-2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

[~~(c)~~] (3) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 70A-2-704).

Section 108. Section **70A-2-615** is amended to read:

70A-2-615. Excuse by failure of presupposed conditions.

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

[~~(a)~~] (1) Delay in delivery or nondelivery in whole or in part by a seller who complies with [~~paragraphs (b) and (c)~~] Subsections (2) and (3) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

[~~(b)~~] (2) Where the causes mentioned in [~~paragraph (a)~~] Subsection (1) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

[~~(c)~~] (3) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under [~~paragraph (b)~~] Subsection (2), of the estimated quota thus made available for the buyer.

Section 109. Section **70A-4a-207** is amended to read:

70A-4a-207. Misdescription of beneficiary.

(1) Subject to Subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the

order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons then the following rules apply[~~.~~]:

[~~(3)~~] (a) Except as otherwise provided in Subsection [~~(5)~~] (3), the beneficiary's bank may treat the person identified by number as the beneficiary of the order if the bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

[~~(4)~~] (b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

[~~(5)~~] (3) If the conditions listed in Subsections [~~(5)~~] (3)(a), (b), and (c) are present, the rules listed in Subsections [~~(6)~~] (4) and [~~(7)~~] (5) apply:

(a) a payment order described in Subsection (2) is accepted;

(b) the originator's payment order described the beneficiary inconsistently by name and number; and

(c) the beneficiary's bank pays the person identified by number as permitted by Subsection (2)(a).

[~~(6)~~] (4) If the originator is a bank, the originator is obliged to pay its order.

[~~(7)~~] (5) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof it if proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

[~~(8)~~] (6) In a case governed by Subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and rescission as follows:

(a) If the originator is obliged to pay its payment order as stated in Subsection [~~(5)~~] (3), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

Section 110. Section **72-4-302** is amended to read:

72-4-302. Utah State Scenic Byway Committee -- Creation -- Membership -- Meetings -- Expenses.

(1) There is created the Utah State Scenic Byway Committee.

(2) (a) The committee shall consist of the following 15 members:

(i) a representative from each of the following entities appointed by the governor:

(A) the Governor's Office of Economic Development;

(B) the Utah Department of Transportation;

(C) the Department of Heritage and Arts;

(D) the Division of [~~State~~] Parks and Recreation;

(E) the Federal Highway Administration;

(F) the National Park Service;

(G) the National Forest Service; and

(H) the Bureau of Land Management;

(ii) one local government tourism representative appointed by the governor;

(iii) a representative from the private business sector appointed by the governor;

(iv) three local elected officials from a county, city, or town within the state appointed by the governor;

(v) a member from the House of Representatives appointed by the speaker of the House of Representatives; and

(vi) a member from the Senate appointed by the president of the Senate.

(b) Except as provided in Subsection (2)(c), the members appointed in this Subsection (2) shall be appointed for a four-year term of office.

(c) The governor shall, at the time of appointment or reappointment for appointments made under Subsection (2)(a)(i), (ii), (iii), or (iv) adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(d) (i) The appointments made under Subsections (2)(a)(v) and (vi) by the speaker of the House and the president of the Senate may not be from the same political party.

(ii) The speaker of the House and the president of the Senate shall alternate the appointments made under Subsections (2)(a)(v) and(vi) as follows:

(A) if the speaker appoints a member under Subsection (2)(a)(v), the next appointment made by the speaker following the expiration of the existing member's four-year term of office shall be from a different political party; and

(B) if the president appoints a member under Subsection (2)(a)(vi), the next appointment made by the president following the expiration of the existing member's four-year term of office shall be from a different political party.

(3) (a) The representative from the Governor's Office of Economic Development shall chair the committee.

(b) The members appointed under Subsections (2)(a)(i)(E) through (H) serve as nonvoting, ex officio members of the committee.

(4) The Governor's Office of Economic Development and the department shall provide staff support to the committee.

(5) (a) The chair may call a meeting of the committee only with the concurrence of the department.

(b) A majority of the voting members of the committee constitute a quorum.

(c) Action by a majority vote of a quorum of the committee constitutes action by the committee.

(6) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

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

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

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 111. Section **73-2-22** is amended to read:

73-2-22. Emergency flood powers -- Action to enforce orders -- Access rights to private and public property -- Injunctive relief against state engineer's decisions -- Judicial review provisions not applicable.

Whenever the state engineer, with approval of the chair of the Emergency Management Administration Council created in Section [~~63K-3-201~~] 53-2a-105, makes a written finding that any reservoir or stream has reached or will reach during the current water year a level far enough above average and in excess of capacity that public safety is or is likely to be endangered or that substantial property damage is occurring or is likely to occur, he shall have emergency powers until the danger to the public and property is abated. Emergency powers shall consist of the authority to control stream flow and reservoir storage or release. The state engineer must protect existing water rights to the maximum extent possible when exercising emergency powers. Any action taken by the state engineer under this section shall be by written order.

If any person refuses or neglects to comply with any order of the state engineer issued pursuant to his emergency powers, the state engineer may bring action in the name of the state in the district court to enforce them. In carrying out his emergency powers, the state engineer shall have rights of access to private and public property.

Any person affected by a decision of the state engineer made under his emergency powers shall have the right to seek injunctive relief, including temporary restraining orders and temporary injunctions in any district court of the county where that person resides. No order of the state engineer shall be enjoined or set aside unless shown by clear and convincing evidence that an emergency does not in fact exist or that the order of the state engineer is arbitrary or capricious. The provisions of Sections 73-3-14 and 73-3-15 shall not be applicable to any order of the state engineer issued pursuant to this section.

Section 112. Section **73-22-3** is amended to read:

73-22-3. Definitions.

As used in this chapter:

(1) "Correlative rights" mean the rights of each geothermal owner in a geothermal area

to produce without waste his just and equitable share of the geothermal resource underlying the geothermal area.

(2) "Division" means the Division of Water Rights, Department of Natural Resources.

(3) "Geothermal area" means the general land area which is underlain or reasonably appears to be underlain by geothermal resources.

(4) "Geothermal fluid" means water and steam at temperatures greater than 120 degrees centigrade naturally present in a geothermal system.

(5) (a) "Geothermal resource" means:

[~~(a)~~] (i) the natural heat of the earth at temperatures greater than 120 degrees centigrade; and

[~~(b)~~] (ii) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium.

(b) "Geothermal resource" does not include geothermal fluids.

(6) "Geothermal system" means any strata, pool, reservoir, or other geologic formation containing geothermal resources.

(7) "Material medium" means geothermal fluids, or water and other substances artificially introduced into a geothermal system to serve as a heat transfer medium.

(8) "Operator" means any person drilling, maintaining, operating, producing, or in control of any well.

(9) "Owner" means a person who has the right to drill into, produce, and make use of the geothermal resource.

(10) "Person" means any individual, business entity (corporate or otherwise), or political subdivision of this or any other state.

(11) "Waste" means any inefficient, excessive, or improper production, use, or dissipation of geothermal resources. Wasteful practices include, but are not limited to: (a) transporting or storage methods that cause or tend to cause unnecessary surface loss of geothermal resources; or (b) locating, spacing, constructing, equipping, operating, producing, or venting of any well in a manner that results or tends to result in unnecessary surface loss or in reducing the ultimate economic recovery of geothermal resources.

(12) "Well" means any well drilled, converted, or reactivated for the discovery, testing,

production, or subsurface injection of geothermal resources.

Section 113. Section **75-3-603** is amended to read:

75-3-603. Bond not required -- Exceptions.

(1) No bond is required of a personal representative appointed in formal or informal proceedings, except:

[~~(1)~~] (a) upon the appointment of a special administrator without notice having been given[~~;~~];

[~~(2)~~] (b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond[~~;~~];

[~~(3)~~] (c) when bond is requested prior to appointment, by an interested party[~~;~~]; or

[~~(4)~~] (d) when bond is required under Section 75-3-605. No bond is required of any personal representative who is exempted from bond under Title 7, Financial Institutions Act. [~~Bond~~]

(2) A bond required pursuant to this section may be dispensed with upon a determination by the court that it is not necessary.

Section 114. Section **76-5-109** is amended to read:

76-5-109. Child abuse -- Child abandonment.

(1) As used in this section:

(a) "Child" means a human being who is under 18 years of age.

(b) (i) "Child abandonment" means that a parent or legal guardian of a child:

(A) intentionally ceases to maintain physical custody of the child;

(B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and

(C) (I) intentionally fails to provide the child with food, shelter, or clothing;

(II) manifests an intent to permanently not resume physical custody of the child; or

(III) for a period of at least 30 days:

(Aa) intentionally fails to resume physical custody of the child; and

(Bb) fails to manifest a genuine intent to resume physical custody of the child.

(ii) "Child abandonment" does not include:

(A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or

(B) giving legal consent to a court order for termination of parental rights:

(I) in a legal adoption proceeding; or

(II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.

(c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.

(d) "Enterprise" is as defined in Section 76-10-1602.

(e) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).

(f) (i) "Serious physical injury" means any physical injury or set of injuries that:

(A) seriously impairs the child's health;

(B) involves physical torture;

(C) causes serious emotional harm to the child; or

(D) involves a substantial risk of death to the child.

(ii) "Serious physical injury" includes:

(A) fracture of any bone or bones;

(B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

(C) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

(D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

(E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;

(F) any damage to internal organs of the body;

(G) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;

(H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

(I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;

(b) if done recklessly, the offense is a felony of the third degree; or

(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to commit child abandonment, is:

(a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

(b) guilty of a felony of the second degree, if, as a result of the child abandonment:

(i) the child suffers a serious physical injury; or

(ii) the person or enterprise receives, directly or indirectly, any benefit.

(5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, [~~Chapter 1, Utah Uniform Forfeiture~~

~~Procedures~~] Forfeiture and Disposition of Property Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

(a) reasonable discipline or management of a child, including withholding privileges;

(b) conduct described in Section 76-2-401; or

(c) the use of reasonable and necessary physical restraint or force on a child:

(i) in self-defense;

(ii) in defense of others;

(iii) to protect the child; or

(iv) to remove a weapon in the possession of a child for any of the reasons described in Subsections (8)(c)(i) through (iii).

Section 115. Section **76-6-111** is amended to read:

76-6-111. Wanton destruction of livestock -- Penalties -- Seizure and disposition of property.

(1) As used in this section:

(a) "Law enforcement officer" is as defined in Section 53-13-103.

(b) "Livestock" means a domestic animal or fur bearer raised or kept for profit, including:

(i) cattle;

(ii) sheep;

(iii) goats;

(iv) swine;

(v) horses;

(vi) mules;

(vii) poultry; and

(viii) domesticated elk as defined in Section 4-39-102.

(2) Unless authorized by Section 4-25-4, 4-25-5, 4-25-14, 4-39-401, or 18-1-3, a person is guilty of wanton destruction of livestock if that person:

(a) injures, physically alters, releases, or causes the death of livestock; and

(b) does so:

(i) intentionally or knowingly; and

(ii) without the permission of the owner of the livestock.

(3) Wanton destruction of livestock is punishable as a:

(a) class B misdemeanor if the aggregate value of the livestock is $500 or less;

(b) class A misdemeanor if the aggregate value of the livestock is more than $500, but does not exceed $1,500;

(c) third degree felony if the aggregate value of the livestock is more than $1,500, but does not exceed $5,000; and

(d) second degree felony if the aggregate value of the livestock is more than $5,000.

(4) A material, device, or vehicle used in violation of Subsection (2) is subject to forfeiture under the procedures and substantive protections established in Title 24, [~~Chapter 1, Utah Uniform Forfeiture Procedures~~] Forfeiture and Disposition of Property Act.

(5) A peace officer may seize a material, device, or vehicle used in violation of Subsection (2):

(a) upon notice and service of process issued by a court having jurisdiction over the property; or

(b) without notice and service of process if:

(i) the seizure is incident to an arrest under:

(A) a search warrant; or

(B) an inspection under an administrative inspection warrant;

(ii) the material, device, or vehicle has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(iii) the peace officer has probable cause to believe that the property has been used in violation of Subsection (2).

(6) (a) A material, device, or vehicle seized under this section is not repleviable but is

in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of a court or official having jurisdiction.

(b) A peace officer who seizes a material, device, or vehicle under this section may:

(i) place the property under seal;

(ii) remove the property to a place designated by the warrant under which it was seized; or

(iii) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Section 116. Section **76-6-501** is amended to read:

76-6-501. Forgery and producing false identification -- Elements of offense -- Definitions.

(1) As used in this part:

(a) "Authentication feature" means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified.

(b) "Document-making implement" means any implement, impression, template, computer file, computer disc, electronic device, computer hardware or software, or scanning, printing, or laminating equipment that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement.

(c) "False authentication feature" means an authentication feature that:

(i) is genuine in origin but that, without the authorization of the issuing authority, has been tampered with or altered for purposes of deceit;

(ii) is genuine, but has been distributed, or is intended for distribution, without the authorization of the issuing authority and not in connection with a lawfully made identification document, document-making implement, or means of identification to which the authentication feature is intended to be affixed or embedded by the issuing authority; or

(iii) appears to be genuine, but is not.

(d) "False identification document" means a document of a type intended or commonly

accepted for the purposes of identification of individuals, and that:

(i) is not issued by or under the authority of a governmental entity or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit; and

(ii) appears to be issued by or under the authority of a governmental entity.

(e) "Governmental entity" means the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization, or a quasi-governmental organization.

(f) "Identification document" means a document made or issued by or under the authority of a governmental entity, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

(g) "Issuing authority" means:

(i) any governmental entity that is authorized to issue identification documents, means of identification, or authentication features; or

(ii) a business organization or financial institution or its agent that issues a financial transaction card as defined in Section 76-6-506.

(h) "Means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including:

(i) name, Social Security number, date of birth, government issued driver license or identification number, alien registration number, government passport number, or employer or taxpayer identification number;

(ii) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; or

(iii) unique electronic identification number, address, or routing code.

(i) "Personal identification card" means an identification document issued by a governmental entity solely for the purpose of identification of an individual.

(j) "Produce" includes altering, authenticating, or assembling.

(k) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States.

(l) "Traffic" means to:

(i) transport, transfer, or otherwise dispose of an item to another, as consideration for anything of value; or

(ii) make or obtain control of with intent to transport, transfer, or otherwise dispose of an item to another.

(m) "Writing" includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:

(i) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;

(ii) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or

(iii) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(2) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person:

(a) alters any writing of another without his authority or utters the altered writing; or

(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication, or utterance:

(i) purports to be the act of another, whether the person is existent or nonexistent;

(ii) purports to be an act on behalf of another party with the authority of that other party; or

(iii) purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when an original did not exist.

(3) It is not a defense to a charge of forgery under Subsection (2)(b)(ii) if an actor signs his own name to the writing if the actor does not have authority to make, complete, execute, authenticate, issue, transfer, publish, or utter the writing on behalf of the party for whom the actor purports to act.

(4) A person is guilty of producing or transferring any false identification document who:

(a) knowingly and without lawful authority produces, attempts, or conspires to produce

an identification document, authentication feature, or a false identification document that is or appears to be issued by or under the authority of an issuing authority;

(b) transfers an identification document, authentication feature, or a false identification document knowing that the document or feature was stolen or produced without lawful authority;

(c) produces, transfers, or possesses a document-making implement or authentication feature with the intent that the document-making implement or the authentication feature be used in the production of a false identification document or another document-making implement or authentication feature; or

(d) traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification.

(5) A person who violates:

(a) Subsection (2) is guilty of a third degree felony; and

(b) Subsection (4) is guilty of a second degree felony.

(6) This part may not be construed to impose criminal or civil liability on any law enforcement officer acting within the scope of a criminal investigation.

(7) The forfeiture of property under this part, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be conducted in accordance with Title 24, [~~Chapter 1, Utah Uniform Forfeiture Procedures~~] Forfeiture and Disposition of Property Act.

(8) The court shall order, in addition to the penalty prescribed for any person convicted of a violation of this section, the forfeiture and destruction or other disposition of all illicit authentication features, identification documents, false transaction cards, document-making implements, or means of identification.

Section 117. Section **76-6-506.7** is amended to read:

76-6-506.7. Obtaining encoded information on a financial transaction card with the intent to defraud the issuer, holder, or merchant.

(1) As used in this section:

(a) "Financial transaction card" or "card" means any credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card, or any other card, issued by an issuer for the use of the card holder in:

(i) obtaining money, goods, services, or anything else of value on credit; or

(ii) certifying or guaranteeing to a merchant the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check as the instrument for obtaining, purchasing, or receiving goods, services, money, or any other thing of value from the merchant.

(b) (i) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of the owner or operator.

(ii) "Merchant" also means a person:

(A) who receives from a card holder, or a third person the merchant believes to be the card holder, a financial transaction card or information from a financial transaction card, or what the merchant believes to be a financial transaction card or information from a card; and

(B) who accepts the financial transaction card or information from a card under Subsection (1)(a)(ii)[~~(A)~~] as the instrument for obtaining, purchasing, or receiving goods, services, money, or any other thing of value from the merchant.

(c) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a financial transaction card onto the magnetic strip or stripe of a different financial transaction card.

(d) "Scanning device" means a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a financial transaction card.

(2) (a) A person is guilty of a third degree felony who uses:

(i) a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a financial transaction card without the permission of the card holder and with intent to defraud the card holder, the issuer, or a merchant; or

(ii) a reencoder to place information encoded on the magnetic strip or stripe of a financial transaction card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the card holder, the issuer, or a merchant.

(b) Any person who has been convicted previously of an offense under Subsection

(2)(a) is guilty of a second degree felony upon a second conviction and any subsequent conviction for the offense.

Section 118. Section **76-6-1102** is amended to read:

76-6-1102. Identity fraud crime.

(1) As used in this part, "personal identifying information" may include:

(a) name;

(b) birth date;

(c) address;

(d) telephone number;

(e) drivers license number;

(f) Social Security number;

(g) place of employment;

(h) employee identification numbers or other personal identification numbers;

(i) mother's maiden name;

(j) electronic identification numbers;

(k) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions Act;

(l) any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through 76-6-506.6; or

(m) a photograph or any other realistic likeness.

(2) (a) A person is guilty of identity fraud when that person knowingly or intentionally uses, or attempts to use, the personal identifying information of another person, whether that person is alive or deceased, with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information.

(b) It is not a defense to a violation of Subsection (2)(a) that the person did not know that the personal information belonged to another person.

(3) Identity fraud is:

(a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the credit, goods, services, employment, or any other thing of value is less than $5,000; or

(b) a second degree felony if:

(i) the value of the credit, goods, services, employment, or any other thing of value is or exceeds $5,000; or

(ii) the use described in Subsection (2)(a)[~~(ii)~~] of personal identifying information results, directly or indirectly, in bodily injury to another person.

(4) Multiple violations may be aggregated into a single offense, and the degree of the offense is determined by the total value of all credit, goods, services, or any other thing of value used, or attempted to be used, through the multiple violations.

(5) When a defendant is convicted of a violation of this section, the court shall order the defendant to make restitution to any victim of the offense or state on the record the reason the court does not find ordering restitution to be appropriate.

(6) Restitution under Subsection (5) may include:

(a) payment for any costs incurred, including attorney fees, lost wages, and replacement of checks; and

(b) the value of the victim's time incurred due to the offense:

(i) in clearing the victim's credit history or credit rating;

(ii) in any civil or administrative proceedings necessary to satisfy or resolve any debt, lien, or other obligation of the victim or imputed to the victim and arising from the offense; and

(iii) in attempting to remedy any other intended or actual harm to the victim incurred as a result of the offense.

Section 119. Section **76-6-1303** is amended to read:

76-6-1303. Possession, sale, or use of automated sales suppression device unlawful -- Penalties.

(1) It is a third degree felony to willfully or knowingly sell, purchase, install, transfer, use, or possess in this state any automated sales suppression device or phantomware with the intent to defraud, except that any second or subsequent violation of this Subsection (1) is a second degree felony.

(2) Notwithstanding Section 76-3-301, any person convicted of violating Subsection (1) may be fined not more than twice the amount of the applicable taxes that would otherwise be due, but for the use of the automated sales suppression device or phantomware.

(3) Any person convicted of a violation of Subsection (1):

(a) is liable for all applicable taxes, penalties under Section 59-1-401, and interest

under Section 59-1-402 that would otherwise be due, but for the use of the automated sales suppression device or phantomware to evade the payment of taxes; and

(b) shall disgorge all profits associated with the sale or use of an automated sales suppression device or phantomware.

(4) An automated sales suppression device and any device containing an automated sales suppression device is contraband and subject to forfeiture under Title 24, [~~Chapter 1, Utah Uniform Forfeiture Procedures~~] Forfeiture and Disposition of Property Act.

Section 120. Section **76-7-305** is amended to read:

76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory -- Exceptions.

(1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains a voluntary and informed written consent from the woman on whom the abortion is performed, that is consistent with:

(a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and

(b) the provisions of this section.

(2) Except as provided in Subsection (9), consent to an abortion is voluntary and informed only if:

(a) at least 72 hours before the abortion, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman:

(i) consistent with Subsection (3)(a), of:

(A) the nature of the proposed abortion procedure;

(B) specifically how the procedure described in Subsection (2)(a)(i)(A) will affect the fetus; and

(C) the risks and alternatives to an abortion procedure or treatment;

(ii) of the probable gestational age and a description of the development of the unborn child at the time the abortion would be performed;

(iii) of the medical risks associated with carrying her child to term; and

(iv) [~~except as provided in Subsection (3)(b),~~] if the abortion is to be performed on an

unborn child who is at least 20 weeks gestational age:

(A) that, upon the woman's request, an anesthetic or analgesic will be administered to the unborn child, through the woman, to eliminate or alleviate organic pain to the unborn child that may be caused by the particular method of abortion to be employed; and

(B) of any medical risks to the woman that are associated with administering the anesthetic or analgesic described in Subsection (2)(a)(iv)(A);

(b) at least 72 hours prior to the abortion the physician who is to perform the abortion, the referring physician, or, as specifically delegated by either of those physicians, a physician, a registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation in any location in the state, informs the pregnant woman that:

(i) the Department of Health, in accordance with Section 76-7-305.5, publishes printed material and an informational video that:

(A) provides medically accurate information regarding all abortion procedures that may be used;

(B) describes the gestational stages of an unborn child; and

(C) includes information regarding public and private services and agencies available to assist her through pregnancy, at childbirth, and while the child is dependent, including private and agency adoption alternatives;

(ii) the printed material and a viewing of or a copy of the informational video shall be made available to her, free of charge, on the Department of Health's website;

(iii) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of that assistance is contained in the printed materials and the informational video published by the Department of Health;

(iv) except as provided in Subsection (3)(b):

(A) the father of the unborn child is legally required to assist in the support of her child, even if he has offered to pay for the abortion; and

(B) the Office of Recovery Services within the Department of Human Services will assist her in collecting child support; and

(v) she has the right to view an ultrasound of the unborn child, at no expense to her, upon her request;

(c) the information required to be provided to the pregnant woman under Subsection (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face consultation, prior to performance of the abortion, unless the attending or referring physician is the individual who provides the information required under Subsection (2)(a);

(d) a copy of the printed materials published by the Department of Health has been provided to the pregnant woman;

(e) the informational video, published by the Department of Health, has been provided to the pregnant woman in accordance with Subsection (4); and

(f) the pregnant woman has certified in writing, prior to the abortion, that the information required to be provided under Subsections (2)(a) through (e) was provided, in accordance with the requirements of those subsections.

(3) (a) The alternatives required to be provided under Subsection (2)(a)(i) include:

(i) a description of adoption services, including private and agency adoption methods; and

(ii) a statement that it is legal for adoptive parents to financially assist in pregnancy and birth expenses.

(b) The information described in Subsection (2)(b)(iv) may be omitted from the information required to be provided to a pregnant woman under this section if the woman is pregnant as the result of rape.

(c) Nothing in this section shall be construed to prohibit a person described in Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv), informing a woman of the person's own opinion regarding:

(i) the capacity of an unborn child to experience pain;

(ii) the advisability of administering an anesthetic or analgesic to an unborn child; or

(iii) any other matter related to fetal pain.

(4) When the informational video described in Section 76-7-305.5 is provided to a pregnant woman, the person providing the information shall:

(a) request that the woman view the video at that time or at another specifically designated time and location; or

(b) if the woman chooses not to view the video at a time described in Subsection (4)(a), inform the woman that she can access the video on the Department of Health's website.

(5) When a serious medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary.

(6) If an ultrasound is performed on a woman before an abortion is performed, the person who performs the ultrasound, or another qualified person, shall:

(a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(b) simultaneously display the ultrasound images in order to permit the woman to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(c) inform the woman that, if she desires, the person performing the ultrasound, or another qualified person shall provide a detailed description of the ultrasound images, including:

(i) the dimensions of the unborn child;

(ii) the presence of cardiac activity in the unborn child, if present and viewable; and

(iii) the presence of external body parts or internal organs, if present and viewable; and

(d) provide the detailed description described in Subsection (6)(c), if the woman requests it.

(7) The information described in Subsections (2), (3), (4), and (6) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:

(a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician concur, in writing, that the abortion is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed; or

(b) Subsection 76-7-302(3)(b)(ii).

(8) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:

(a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102; and

(b) shall be subject to:

(i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and

(ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

(9) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2), or for failing to comply with Subsection (6), if:

(a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;

(b) in the physician's professional judgment, the abortion was necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(c) the pregnancy was the result of rape or rape of a child, as defined in Sections 76-5-402 and 76-5-402.1;

(d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and Section 76-7-102; or

(e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

(10) A physician who complies with the provisions of this section and Section 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain informed consent under Section 78B-3-406.

(11) (a) The Department of Health shall provide an ultrasound, in accordance with the provisions of Subsection (2)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a person who requests an ultrasound described in Subsection (11)(a) to the Department of Health.

(12) A physician is not guilty of violating this section if:

(a) the physician provides the information described in Subsection (2) less than 72

hours before performing the abortion; and

(b) in the physician's professional judgment, the abortion was necessary in a case where:

(i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Section 121. Section **76-10-808** is amended to read:

76-10-808. Relief granted for public nuisance.

If the existence of a public nuisance as defined by Subsection 76-10-803(1)(b) is admitted or established, either in a civil or criminal proceeding, a judgment shall be entered which shall:

[~~(a)~~] (1) permanently enjoin each defendant and any other person from further maintaining the nuisance at the place complained of and each defendant from maintaining such nuisance elsewhere;

[~~(b)~~] (2) direct the person enjoined to surrender to the sheriff of the county in which the action was brought any material in his possession which is subject to the injunction, and the sheriff shall seize and destroy this material; and

[~~(c)~~] (3) without proof of special injury direct that an accounting be had and all money and other consideration paid as admission to view any motion picture film determined to constitute a public nuisance, or paid for any publication determined to constitute a public nuisance, in either case without deduction for expenses, be forfeited and paid into the general fund of the county where the nuisance was maintained.

Section 122. Section **76-10-1108** is amended to read:

76-10-1108. Seizure and disposition of gambling debts or proceeds.

Any gambling bets or gambling proceeds which are reasonably identifiable as having been used or obtained in violation of this part may be seized and are subject to forfeiture proceedings in accordance with Title 24, [~~Chapter 1, Utah Uniform Forfeiture Procedures~~] Forfeiture and Disposition of Property Act.

Section 123. Section **77-10a-12** is amended to read:

77-10a-12. Representation of state -- Appointment and compensation of special

prosecutor.

(1) The state may be represented before any grand jury summoned in the state by:

(a) the attorney general or any assistant attorney general;

(b) a county attorney or any deputy county attorney;

(c) a district attorney or any deputy district attorney;

(d) a municipal attorney or any deputy municipal attorney; [~~and~~] or

(e) special prosecutors appointed under this chapter and their assistants.

(2) The supervising judge shall determine if a special prosecutor is necessary. A special prosecutor may be appointed only upon good cause shown and after the supervising judge makes a written finding that a conflict of interest exists in the Office of the Attorney General, the office of the county attorney, district attorney, or municipal attorney who would otherwise represent the state before the grand jury.

(3) In selecting a special prosecutor, the supervising judge shall give preference to the attorney general and assistant attorneys general, county attorneys, district attorneys, or municipal attorneys and their deputies.

(4) (a) The compensation of a special prosecutor appointed under this chapter who is an employee of the Office of the Attorney General, the office of a county attorney, district attorney, or municipal attorney is only the current compensation received in that office.

(b) The compensation for an appointed special prosecutor who is not an employee of a prosecutorial office under Subsection (4)(a) shall be comparable to the compensation of a deputy or assistant attorney general having similar experience to that of the special prosecutor.

(5) The attorney general, county attorney, district attorney, or municipal attorney may elect to have a special prosecutor appointed by the supervising judge at the expense of the governmental entity supporting the electing prosecutor. Upon receipt of written notice from the prosecutor of that election, the supervising judge shall appoint a special prosecutor in accordance with this section. The electing prosecutor's supporting governmental entity shall reimburse the state for expenses incurred in appointment and compensation of the special prosecutor.

Section 124. Section **77-15a-104** is amended to read:

77-15a-104. Hearing -- Notice -- Stay of proceeding -- Examinations of defendant -- Scope of examination -- Report -- Procedures.

(1) (a) If a defendant proposes to offer evidence concerning or argue that he qualifies for an exemption from the death penalty under Subsection 77-15a-101(1) or (2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.

(b) If the defendant wishes to claim the exemption provided in Subsection 77-15a-101(2), the defendant shall file and serve the prosecuting attorney with written notice of his intention as soon as practicable, but not fewer than 60 days before trial.

(2) When notice is given under Subsection (1), the court raises the issue, or a motion is filed regarding Section 77-15a-101, the court may stay all proceedings in order to address the issue.

(3) (a) The court shall order the Department of Human Services to appoint at least two mental health experts to examine the defendant and report to the court. The experts:

(i) may not be involved in the current treatment of the defendant; and

(ii) shall have expertise in mental retardation assessment.

(b) Upon appointment of the experts, the defendant or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's mental retardation, including copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(c) The court may make the necessary orders to provide the information listed in Subsection (3)(b) to the examiners.

(d) The court may provide in its order appointing the examiners that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(e) Prior to examining the defendant, examiners shall specifically advise the defendant of the limits of confidentiality as provided under Section 77-15a-106.

(4) During any examinations under Subsection (3), unless the court directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(5) The experts shall in the conduct of their examinations and in their reports to the court consider and address:

(a) whether the defendant is mentally retarded as defined in Section 77-15a-102;

(b) the degree of any mental retardation the expert finds to exist;

(c) whether the defendant has the mental deficiencies specified in Subsection 77-15a-101(2); and

(d) the degree of any mental deficiencies the expert finds to exist.

(6) (a) The experts examining the defendant shall provide written reports to the court, the prosecution, and the defense within 60 days of the receipt of the court's order, unless the expert submits to the court a written request for additional time in accordance with Subsection (6)(c).

(b) The reports shall provide to the court and to prosecution and defense counsel the examiners' written opinions concerning the mental retardation of the defendant.

(c) If an examiner requests of the court additional time, the examiner shall provide the report to the court and counsel within 90 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the examination and provide the report.

(7) Any written report submitted by an expert shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the expert's clinical observations, findings, and opinions; and

(d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) Within 30 days after receipt of the report from the Department of Human Services, but not later than five days before hearing, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of witnesses the prosecuting attorney proposes to call in rebuttal.

(9) (a) Except pursuant to Section 77-15a-105, this chapter does not prevent any party from producing any other testimony as to the mental condition of the defendant.

(b) Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (10).

(10) (a) Expenses of examinations of the defendant ordered by the court under this

section shall be paid by the Department of Human Services.

(b) Travel expenses associated with any court-ordered examination that are incurred by the defendant shall be charged by the Department of Human Services to the county where prosecution is commenced.

(11) (a) When the report is received, the court shall set a date for a hearing to determine if the exemption under Section 77-15a-101 applies. The hearing shall be held and the judge shall make the determination within a reasonable time prior to jury selection.

(b) Prosecution and defense counsel may subpoena to testify at the hearing any person or organization appointed by the Department of Human Services to conduct the examination and any independent examiner.

(c) The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine that examiner.

(12) (a) A defendant is presumed to be not mentally retarded unless the court, by a preponderance of the evidence, finds the defendant to be mentally retarded. The burden of proof is upon the proponent of mental retardation at the hearing.

(b) A finding of mental retardation does not operate as an adjudication of mental retardation for any purpose other than exempting the person from a sentence of death in the case before the court.

(13) (a) The defendant is presumed not to possess the mental deficiencies listed in Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22. The burden of proof is upon the proponent of that proposition.

(b) If the court finds by a preponderance of the evidence that the defendant has significant subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning and that this functioning was manifested prior to age 22, then the burden is upon the state to establish that any confession by the defendant which the state intends to introduce into evidence is supported by substantial evidence independent of the confession.

(14) (a) If the court finds the defendant mentally retarded, it shall issue an order:

(i) containing findings of fact and conclusions of law, and addressing each of the factors in Subsections (5)(a) and (b); and

(ii) stating that the death penalty is not a sentencing option in the case before the court.

(b) If the court finds by a preponderance of the evidence that the defendant possesses the mental deficiencies listed in Subsection 77-15a-101(2) and that the state fails to establish that any confession is supported by substantial evidence independent of the confession, the state may proceed with its case and:

(i) introduce the confession into evidence, and the death penalty will not be a sentencing option in the case; or

(ii) not introduce into evidence any confession or the fruits of a confession that the court has found is not supported by substantial evidence independent of the confession, and the death penalty will be a sentencing option in the case.

(c) (i) A finding by the court regarding whether the defendant qualifies for an exemption under Section 77-15a-101 is a final determination of that issue for purposes of this chapter.

(ii) The following questions may not be submitted to the jury by instruction, special verdict, argument, or other means:

(A) whether the defendant is mentally retarded for purposes of this chapter; and

(B) whether the defendant possesses the mental deficiencies specified in Subsection 77-15a-101(2).

(iii) This chapter does not prevent the defendant from submitting evidence of retardation or other mental deficiency to establish a mental condition as a mitigating circumstance under Section 76-3-207.

(15) A ruling by the court that the defendant is exempt from the death penalty may be appealed by the state pursuant to [~~Subsection~~] Section 77-18a-1[~~(2)(h)~~].

(16) Failure to comply with this section does not result in the dismissal of criminal charges.

Section 125. Section **77-27-21.8** is amended to read:

77-27-21.8. Sex offender in presence of a child -- Definitions -- Penalties.

(1) As used in this section:

(a) "Accompany" means:

(i) to be in the presence of an individual; and

(ii) to move or travel with that individual from one location to another, whether outdoors, indoors, or in or on any type of vehicle.

(b) "Child" means an individual younger than 14 years of age.

(2) A sex offender subject to registration in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, for an offense committed or attempted to be committed against a child younger than 14 years of age is guilty of a class A misdemeanor if the sex offender requests, invites, or solicits a child to accompany the sex offender, under circumstances that do not constitute an attempt to violate Section 76-5-301.1, child kidnapping, unless:

(a) (i) the sex offender, prior to accompanying the child:

(A) verbally advises the child's parent or legal guardian that the sex offender is on the state sex offender registry and is required by state law to obtain written permission in order for the sex offender to accompany the child; and

(B) requests that the child's parent or legal guardian provide written authorization for the sex offender to accompany the child, including the specific dates and locations;

(ii) the child's parent or legal guardian has provided to the sex offender written authorization, including the specific dates and locations, for the sex offender to accompany the child; and

(iii) the sex offender has possession of the written authorization and is accompanying the child only at the dates and locations specified in the authorization;

(b) the child's parent or guardian has verbally authorized the sex offender to accompany the child either in the child's residence or on property appurtenant to the child's residence, but in no other locations; or

(c) the child is the natural child of the sex offender, and the offender is not prohibited by any court order, or probation or parole provision, from contact with the child.

(3) (a) A sex offender convicted of a violation of Subsection (2) is subject to registration in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, for an additional five years subsequent to the required registration under Section [~~77-27-21.5~~] 77-41-105.

(b) The period of additional registration imposed under Subsection (3)(a) is also in addition to any period of registration imposed under Subsection 77-41-107(3) for failure to

comply with registration requirements.

(4) It is not a defense to a prosecution under this section that the defendant mistakenly believed the individual to be 14 years of age or older at the time of the offense or was unaware of the individual's true age.

(5) This section does not apply if a sex offender is acting to rescue a child who is in an emergency and life-threatening situation.

Section 126. Section **77-32-301** is amended to read:

77-32-301. Minimum standards for defense of an indigent.

(1) Each county, city, and town shall provide for the legal defense of an indigent in criminal cases in the courts and various administrative bodies of the state in accordance with legal defense standards as defined in Subsection [~~77-32-208~~] 77-32-201(8).

(2) (a) A county or municipality which contracts with a defense services provider shall provide that all legal defense elements be included as a single package of legal defense services made available to indigents, except as provided in Sections 77-32-302 and 77-32-303.

(b) When needed to avoid a conflict of interest between:

(i) trial counsel and counsel on appeal, a defense services provider contract shall also provide for separate trial and appellate counsel; and

(ii) counsel for co-defendants, a defense services provider contract shall also provide for separate trial counsel.

(c) If a county or municipality contracts to provide all legal defense elements as a single package, a defendant may not receive funding for defense resources unless represented by publicly funded counsel or as provided in Subsection 77-32-303(2).

Section 127. Section **78A-6-606** is amended to read:

78A-6-606. Suspension of license for certain offenses.

(1) This section applies to a minor who is at least 13 years of age when found by the court to be within its jurisdiction by the commission of an offense under:

(a) Section 32B-4-409;

(b) Section 32B-4-410;

(c) Section 32B-4-411;

(d) Section 58-37-8;

(e) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(f) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(g) Subsection 76-9-701(1).

(2) If the court hearing the case determines that the minor committed an offense under Section 58-37-8 or Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or 37b, Imitation Controlled Substances Act, the court shall prepare and send to the Driver License Division of the Department of Public Safety an order to suspend that minor's driving privileges.

(3) (a) The court hearing the case shall suspend the minor's driving privileges if:

(i) the minor violated Section 32B-4-409, Section 32B-4-410, or Subsection 76-9-701(1); and

(ii) the violation described in Subsection (3)(a)(i) was committed on or after July 1, 2009.

(b) Notwithstanding the requirement in Subsection (3)(a), the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's first violation of Section 32B-4-409, Section 32B-4-410, or Subsection 76-9-701(1); and

(ii) the minor completes an educational series as defined in Section 41-6a-501.

(c) Notwithstanding the requirement in Subsection (3)(a) and in accordance with the requirements of Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's second or subsequent violation of Section 32B-4-409, Section 32B-4-410, or Subsection 76-9-701(1); and

(ii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol for at least a one-year consecutive period during the suspension period imposed under Subsection (3)(a); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol for at least a one-year consecutive period during the suspension period imposed under Subsection (3)(a).

(d) If a minor commits a proof of age violation, as defined in Section 32B-4-411:

(i) the court shall forward a record of adjudication to the Department of Public Safety for a first or subsequent violation; and

(ii) the minor's driving privileges will be suspended:

(A) for a period of at least one year under Section 53-3-220 for a first conviction for a violation of Section 32B-4-411; or

(B) for a period of two years for a second or subsequent conviction for a violation of Section 32B-4-411.

(4) A minor's license shall be suspended under Section 53-3-219 when a court issues an order suspending the minor's driving privileges for a violation of:

(a) Section 32B-4-409;

(b) Section 32B-4-410;

(c) Section 58-37-8;

(d) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or 37b, Imitation Controlled Substances Act; or

(e) Subsection 76-9-701(1).

(5) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended under this section, the Department of Public Safety shall extend the suspension for a like period of time.

Section 128. Section **78A-6-1113** is amended to read:

78A-6-1113. Property damage caused by a minor -- Liability of parent or legal guardian -- Criminal conviction or adjudication for criminal mischief or criminal trespass not a prerequisite for civil action under chapter -- When parent or guardian not liable.

(1) The parent or legal guardian having legal custody of the minor is liable for damages sustained to property not to exceed $2,000 when:

(a) the minor intentionally damages, defaces, destroys, or takes the property of another;

(b) the minor recklessly or willfully shoots or propels a missile, or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing; or

(c) the minor intentionally and unlawfully tampers with the property of another and thereby recklessly endangers human life or recklessly causes or threatens a substantial interruption or impairment of any public utility service.

(2) The parent or legal guardian having legal custody of the minor is liable for damages

sustained to property not to exceed $5,000 when the minor commits an offense under Section (1):

(a) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(b) to gain recognition, acceptance, membership, or increased status with a criminal street gang.

(3) The court may make an order for the restitution authorized in this section to be paid by the minor's parent or guardian as part of the minor's disposition order.

(4) As used in this section, property damage described under Subsection (1)(a) or (c), or Subsection (2), includes graffiti, as defined in Section 76-6-107.

(5) A court may waive part or all of the liability for damages under this section by the parent or legal guardian if the offender is adjudicated in the juvenile court under Section 78A-6-117 only upon stating on the record that the court finds:

(a) good cause; or

(b) the parent or legal guardian:

(i) made a reasonable effort to restrain the wrongful conduct; and

(ii) reported the conduct to the property owner involved or the law enforcement agency having primary jurisdiction after the parent or guardian knew of the minor's unlawful act.

(6) A report is not required under Subsection [~~(4)~~] (5)(b) from a parent or legal guardian if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the property owner involved.

(7) A conviction for criminal mischief under Section 76-6-106, criminal trespass under Section 76-6-206, or an adjudication under Section 78A-6-117 is not a condition precedent to a civil action authorized under Subsection (1) or (2).

(8) A parent or guardian is not liable under Subsection (1) or (2) if the parent or guardian made a reasonable effort to supervise and direct their minor child, or, in the event the parent or guardian knew in advance of the possible taking, injury, or destruction by their minor child, made a reasonable effort to restrain the child.

Section 129. Section **78A-7-118** is amended to read:

78A-7-118. Appeals from justice court -- Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing, except as provided in Subsection [~~(3)~~] (4)(b); or

(b) a plea of guilty or no contest in the justice court that is held in abeyance.

(2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.

(3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(4) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if the defendant files a notice of appeal within 30 days of:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;

(c) a sentence entered pursuant to Subsection (4)(b); or

(d) an order denying a motion to withdraw a plea.

(5) The prosecutor is entitled to a hearing de novo in the district court on:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;

(f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor; or

(g) an order granting a motion to withdraw a plea of guilty or no contest.

(6) A notice of appeal for a hearing de novo in the district court on a pretrial order excluding evidence under Subsection (5)(e) or (f) shall be filed within 30 days of the order excluding the evidence.

(7) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case;

(b) with agreement of the parties, the district court consents to retain jurisdiction; or

(c) the defendant enters a plea of guilty or no contest in the district court.

(8) The district court shall retain jurisdiction over the case on trial de novo.

(9) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Section 130. Section **78B-4-202** is amended to read:

78B-4-202. Equine and livestock activity liability limitations.

(1) It shall be presumed that participants in equine or livestock activities are aware of and understand that there are inherent risks associated with these activities.

(2) An equine activity sponsor, equine professional, livestock activity sponsor, or livestock professional is not liable for an injury to or the death of a participant due to the inherent risks associated with these activities, unless the sponsor or professional:

(a) (i) provided the equipment or tack;

(ii) the equipment or tack caused the injury; and

(iii) the equipment failure was due to the sponsor's or professional's negligence;

(b) failed to make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity with the participant;

(c) owns, leases, rents, or is in legal possession and control of land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to or should have been known to the sponsor or professional and for which warning signs have not been conspicuously posted;

(d) (i) commits an act or omission that constitutes negligence, gross negligence, or willful or wanton disregard for the safety of the participant; and

(ii) that act or omission causes the injury; or

(e) intentionally injures or causes the injury to the participant.

(3) This chapter does not prevent or limit the liability of an equine activity sponsor, an equine professional, a livestock activity sponsor, or a livestock professional who is:

(a) a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act, in an

action to recover for damages incurred in the course of providing professional treatment of an equine;

(b) liable under Title 4, Chapter 25, [~~Estrays~~] Estraying and Trespassing Animals; or

(c) liable under Title 78B, Chapter 6, Part 7, Utah Product Liability Act.

Section 131. Section **78B-4-514** is amended to read:

78B-4-514. Definitions -- Immunity for architects and engineers during emergencies.

(1) As used in this section:

(a) "Architect" means a person licensed in accordance with Title 58, Chapter 3a, Architects Licensing Act.

(b) "Declared state of emergency" means a state of emergency declared by the governor of this state or by the chief executive officer of a political subdivision, in accordance with Title [~~63K~~] 53, Chapter [~~4, Disaster Response and Recovery~~] 2a, Emergency Management Act.

(c) "Professional engineer" means a person licensed in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(d) "Public official" means an appointed or elected federal, state, or local official, including building inspectors and police and fire chiefs, acting within the scope and jurisdiction of the official's authority during a declared emergency.

(2) An architect or professional engineer, acting in good faith and within the scope of his or her respective license, is not liable for:

(a) any acts, errors, or omissions; or

(b) personal injury, wrongful death, property damage, or any other loss arising from architectural or engineering services provided by the architect or engineer:

(i) as a non-paid volunteer at the request of a public official; and

(ii) during, or for 90 days following, a declared state of emergency.

(3) Nothing in Subsection (2) shall be construed to provide immunity to an architect or engineer for architectural or engineering services that are not within the scope of licensure.

Section 132. Section **78B-15-612** is amended to read:

78B-15-612. Minor as party -- Representation.

(1) A minor is a permissible party, but is not a necessary party to a proceeding under this part.

(2) The tribunal may appoint an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902, or a private attorney guardian ad litem under Section 78A-2-705, to represent a minor or incapacitated child if the child is a party.

Legislative Review Note
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