

# L A W S

of the

## STATE OF UTAH, 1963

Passed by

**REGULAR SESSION**

of the

**THIRTY-FIFTH LEGISLATURE**

Convened at the Capitol in the City of Salt Lake

**January 14, 1963**

**And Adjourned Sine Die on**

**March 14, 1963**

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Published by Authority

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**INLAND PRINTING CO.**

**Publishers**

**Kaysville, Utah**



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TERM: 1961-1965



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**THIRTY-FIFTH UTAH STATE LEGISLATURE, 1963**  
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 QUAYLE CANNON Jr. .... Salt Lake City  
 Sergeant-at-Arms—  
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## AUTHENTICATION

State of Utah }  
Office of Secretary of State } ss.

THIS IS TO CERTIFY that the acts and resolutions published in this volume beginning at Page One and ending Page Six Hundred Ninety-Nine, are each full, true and correct copies of the originals, passed at the Regular Session of the Thirty-fifth Legislature of the State of Utah, as they appear of record in the Office of the Secretary of State;

That the Regular Session of the Thirty-fifth Legislature of the State of Utah, was convened at the Capitol in the city of Salt Lake, January 14, 1963, and adjourned sine die on the 14th day of March, 1963.

That all the acts and resolutions passed at said Regular Session were officially published on the 28th day of July, 1963.



IN TESTIMONY WHEREOF, I have heretofore set my hand as Secretary of State, and affixed the Great Seal of the State of Utah, at Salt Lake City, this 24th day of June, 1963.

*Lamont F. Toronto*

Secretary of State



**L A W S**  
of the  
**STATE OF UTAH, 1963**

Passed at the  
**THIRTY-FIFTH REGULAR SESSION**  
of the Legislature

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**AERONAUTICS**

**CHAPTER 1**

H. B. No. 2

(Passed March 14, 1963. In effect May 14, 1963)

**LEASING AIRPORT PROPERTY**

**An Act Amending Section 2-2-7, Utah Code Annotated 1953, Relating to  
Leasing or Assigning of Airport Property to Private Parties.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 2-2-7, Utah Code Annotated 1953, is amended to read:

**2-2-7. Power of Commission and Political Subdivisions.**

The state aeronautics commission and counties, municipalities or other political subdivisions of this state which have established or may hereafter establish airports or landing fields, or which acquire, lease or set apart real property for such purpose or purposes, are hereby authorized:

(1) To construct, equip, improve, maintain and operate the same or to vest the authority for the construction, equipment, improvement, maintenance and operation thereof, in an officer of the state aeronautics commission or in an officer, board or body of such subdivision. The expense of such construction, equipment, improvement, maintenance and operation shall be a responsibility of said commission or of said political subdivision.

(2) To adopt regulations and establish charges, fees and tolls for the use of such airports and landing field, fix penalties for the violation of said regulations, and to establish liens to enforce payment of said charges, fees and tolls.

(3) To lease such airports or landing fields to private parties for operation for a term not exceeding ten years, provided, in so doing the public is not deprived of its rightful, equal, and uniform use thereof; or to lease or assign space, area, improvements, and equipment on such airports or landing fields to private parties for operation for a term not exceeding twenty years; or to lease or assign real property comprising all or any part of such airports or landing fields to private parties for the construction and operation thereon of hangars, shop buildings or office buildings for a term not exceeding thirty-five years if the construction cost of any such hangar, shop building or office building is to be \$100,000 or more.

Approved March 18, 1963.

# AGRICULTURE

## CHAPTER 2

S. B. No. 101

(Passed March 14, 1963. In effect May 14, 1963)

### SEED LABELING

**An Act Amending Section 4-2-3, Utah Code Annotated 1953, Relating to the Labeling or Tagging of Seeds; Providing for Recitals on Tag or Label When Seed Is Offered for Sale.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 4-2-3, Utah Code Annotated 1953, is amended to read:

#### **Section 4-2-3. Labeling or Tagging Seeds—Recitals of Tag or Label.**

Each container of agricultural or vegetable seed which is sold, offered for sale, or exposed for sale, within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place or plainly written or printed label or tag in the English language giving the following information:

(1) For agricultural seeds—

(e) Commonly accepted name of (i) kind, or (ii) kind and variety, of each agricultural seed component in excess of 5 per cent of the whole, and the percentage of weight by each in the order of its predominance. Where more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

Exception is made to rye grain only, which shall be named if found in any amount, giving the percentage by weight or the number of rye seeds found per pound. The word "mixture" or the word "mixed" is not required if the rye grain found is less than 5 per cent of the whole.

(b) Lot number or other lot identification.

(c) Origin, if known, of alfalfa, red clover, and field corn. If the origin is unknown, the fact shall be stated.

(d) Percentage by weight of all weed seeds.

(e) The name and approximate number of each kind of noxious-weed seed for which tolerance is permitted.

(A) Per ounce in *Agrostis* spp., *Poa* spp., Rhodes grass, timothy, orchard grass, fescues, alsike and white clover, reed canary grass, Dallis grass, rye grass, foxtail millet, alfalfa, red clover, sweet-clovers, lespedezas, smooth brome, crimson clover, *Brassica* spp., flax, *Agropyron* spp., and other agricultural seeds of similar size and weight, or mixtures within this group, and

(B) Per pound in proso, Sudan grass, wheat, oats, rye, barley, buckwheat, sorghums, vetches, and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group.

(f) For seed mixtures for lawn and/or turf purposes in containers of 50 pounds or less:

(1) The word "mixed" or "mixture".

(2) The headings "fine-textured grasses" and "coarse kinds" in 8-point or larger type on a contrasting background and thereunder

in tabular form in uniform size type no larger than the heading nor smaller than 8-point.

(3) Commonly accepted name in order of its predominance, of the kind or the kind and variety of each agricultural seed present in excess of 5 per cent of the whole and determined to be a "fine-textured grass" or a "coarse kind" in accordance with the rules and regulations under this act.

(g) Net weight.

(h) Percentage by weight of agricultural or crop seeds other than those required to be named on the label.

(i) Percentage by weight of inert matter.

(j) For each named agricultural seed:

(A) Percentage of germination, exclusive of hard seed;

(B) Percentage of hard seed, if present;

(C) Total germination and hard seed;

(D) The calendar month and year the test was completed to determine such percentages.

(k) Name and address of the person who labeled said seeds, or who sells, offers, or exposes said seed for sale within this state.

(1) The country or state of origin of all imported seeds.

(2) For vegetable seeds—

(a) Name and kind of variety of seed.

(b) For seeds which germinate less than the standard last established by the state board of agriculture under this act;

(A) Percentage of germination, exclusive of hard seed;

(B) Percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine such percentages;

(D) The words "Below Standard" in not less than 8-point type; and

(e) Name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this state.

Approved March 18, 1963.

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### CHAPTER 3

H. B. No. 32

(Passed February 21, 1963. In Effect May 14, 1963)

#### MIXING COMMERCIAL FERTILIZERS

**An Act Amending Section 4-19-7, Utah Code Annotated 1953, Relating to Blending and Mixing of Commercial Fertilizers and Fertilizer Materials, Providing for the Licensing of Blenders and Custom Mixers, Specifying License Fees and Reporting Tonnage of Fertilizer Materials Blended or Mixed.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 4-19-7, Utah Code Annotated 1953, is amended to read:

#### **4-19-7. Registration and License Fees.**

For the privilege of registration, selling and offering for sale com-

mercial fertilizer and fertilizer materials, the manufacturer or importer applying therefor shall pay to the state board of agriculture in advance of registration \$25 annual registration fee for each brand, trade-mark, guaranteed analysis or grade as the case may be, and an annual license fee of \$25. Said license and registration shall expire on the thirty-first day of December of the year for which such is issued.

Any distributor who blends or mixes commercial fertilizer or fertilizer materials to a customer's order without a guaranteed analysis of the mixture in accordance with Section 4-19-4 of this act, must first make application to sell said mixture and obtain a license from the state board of agriculture. In lieu of the guaranteed analysis, required in Section 4-19-4, the licensee must furnish to each and every purchaser and consumer in written or printed form, an invoice or delivery ticket showing the net weight and guaranteed analysis of each and every one of the materials used, which shall accompany delivery. The application for such a license shall be submitted to the board of agriculture on forms furnished by the board and shall be accompanied by a fee as herein prescribed which shall constitute the license fee in event the license is granted. Said application shall not be refused except for good and sufficient reason, and in the event of such refusal, the application fee shall be refunded.

If said distributor blends or mixes commercial fertilizer or fertilizer materials at more than one fixed location, or by more than one mobile mechanical unit, then a license is required for each location and for each such mobile mechanical mixing or blending unit. The license shall be \$50 in the case of each location, but in the case of mobile mixing or blending units, each unit owned and operated by any one distributor shall be licensed at the rate of \$50 for the first unit, and \$20 for each additional mobile unit. The license shall expire on December 31 of each year. Each licensee shall furnish the board of agriculture with a semi-annual confidential written statement of the tonnage of each grade of fertilizer material used by him in this state in his blending and mixing operation during the preceding semiannual period. Said statement shall cover the semiannual periods ending June 30 and December 31 of each year, and shall be filed with the board of agriculture not later than 30 days (which may be extended by the Board on valid reason shown for an additional thirty days, on written requests to the board) after the close of each semiannual period.

The distributor shall at all times produce an intimate and uniform mixture of fertilizer materials or soil amendments. When two or more fertilizers are delivered in the same load, they shall be intimately and uniformly mixed unless they are in separate compartments.

The board of agriculture is authorized and empowered to cancel the license, upon satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this section; provided that no license shall be revoked or refused until the licensee shall have been given an opportunity for a hearing by the board of agriculture.

Approved February 25, 1963.

## CHAPTER 4

H. B. No. 20

(Passed February 19, 1963. In effect July 1, 1963)

## MEAT INSPECTION

**An Act Amending Sections 4-27-6; 4-27-7; 4-27-11; and 4-27-14, Utah Code Annotated 1953, as Enacted by Chapter 5, Laws of 1959, Regulating Meat Inspection, and Eliminating Inspection Fees to Be Paid by Slaughterhouses.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 4-27-6, Utah Code Annotated 1953, is amended to read:

**4-27-6. Application for License—Fees.**

All fees collected on licenses as provided in the preceding section shall be deposited with the state treasurer to be placed in a fund known as the meat inspection fund. The board may draw upon such fund for the purposes of administering and enforcing this act. In addition to the fund above named, the legislature shall appropriate from the general fund sufficient money to administer the provisions of this chapter.

**Section 2. Section Amended.**

Section 4-27-7, Utah Code Annotated 1953, is amended to read:

**4-27-7. Exemption From Chapter.**

The provisions of this chapter relating to meat inspection shall not apply to the following:

(1) Animals, slaughtered by any person for his own domestic use or that of his immediate family, or to animals slaughtered for a person for his own domestic use or that of his immediate family by a custom slaughterhouse provided that the custom slaughterhouse is licensed and is subject to sanitary inspection by the State Department of Agriculture and provided that such meat shall be stamped with the words "not to be sold" in three separate places on each quarter thereof.

(2) Animals or the carcasses or parts thereof that are inspected and stamped by inspectors of the United States Government.

**Section 3. Section Amended.**

Section 4-27-11, Utah Code Annotated 1953, is amended to read:

**4-27-11. Meat Inspection Districts—Inspection Fees.**

The board, for the purpose of providing the above mentioned ante-mortem and post-mortem examinations and inspections and enforcing sanitary and other regulations governing the operation of slaughtering establishments, is authorized to divide the state into meat inspection districts, designate killing days for each establishment where deemed advisable, to employ such veterinarians and other inspectors as it deems necessary.

**Section 4. Section Amended.**

Section 4-27-14, Utah Code Annotated 1953, is amended to read:

**4-27-14. Local Regulatory Powers.**

Nothing in this act shall impair or abridge the power of any county, city, or incorporated town to regulate the killing, processing, handling, storage, distribution, and sale of meat food products made from such animals nor their authority to make such ante-mortem and post-mortem inspections; provided, the minimum requirements under this act and under the regulations of the State Board of Agriculture governing the above mentioned items are observed. Where an inspection service is provided by any county, city or incorporated town, the State Board of Agriculture may accept the findings of such inspection service in lieu of making a routine inspection, except for the purpose of evaluating the facilities and efficiency of such inspection program. When such facilities do not meet the minimum standards, no license to conduct slaughtering shall be granted. The State Board of Agriculture may enter into agreements with persons, firms, corporations, counties, or municipal governments to pay any or all of the expenses of supervising inspections, conducting inspections and employing competent, graduate, licensed veterinary inspectors or trained technicians.

**Section 5. Effective Date.**

This act shall take effect July 1st, 1963.

Approved February 20, 1963.

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**CHAPTER 5**

H. B. No. 28

(Passed March 8, 1963. In effect May 14, 1963)

**EXEMPTION FROM LIVESTOCK MARKETING ACT**

**An Act Amending Section 5-1-4, Utah Code Annotated 1953, Providing for Exemptions From Produce Dealers Act.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 5-1-4, Utah Code Annotated 1953, is amended to read:

**5-1-4. Exceptions From Act.**

This act shall not be construed to apply to:

(a) Any cooperative organization operating under and by virtue of the laws of the state of Utah, or of any other state, or of the District of Columbia, or under federal statute, or the agents, individual, or corporate officers of such organization in the performance of their duties as such, except as to that portion of the activities of such organization or agent as involves the handling or dealing in the farm products of non-members of such organization, or in processing the products as defined in paragraph (i) section 5-1-2, hereof.

(b) Any person or exchange dealing in livestock subject to and operating under a bond required by the United States to secure the performance of their obligations.

Approved March 11, 1963.

## CHAPTER 6

H. B. No. 173

(Passed March 16, 1963. In effect May 14, 1963)

## MARKETING ACT

**An Act Amending Sections 5-5-3, Utah Code Annotated 1953, and 5-5-8, Utah Code Annotated 1953, as Amended by Chapter 8, Laws of Utah 1959, Providing for a New Definition of Processor and for the Collection of Assessments for Expenses Incurred Under Agricultural Marketing Orders From Producers, Processors, or Handlers at the Commissioner's Discretion.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 5-5-3, Utah Code Annotated 1953, is amended to read:

**5-5-3. Definitions.**

(a) Agricultural commodity as used in this act means all fruits, vegetables, eggs, live and dressed poultry and turkeys produced in the state of Utah.

(b) Producer means any person in this state in the business of producing or causing to be produced for market any agricultural commodities, provided producers shall not include producers who sell direct to the consumer agricultural products which they themselves have produced.

(c) Handler means any person engaged in the operation of selling, marketing or distributing, in intrastate commerce, or affecting intrastate commerce, agricultural commodities which are produced in Utah, but no regulation under this act shall apply to the sale of such agricultural commodities to the ultimate consumer.

(d) Person means an individual, firm, corporation, association, or any other business unit.

(e) Commissioner means a commissioner of agriculture of the state of Utah.

(f) To handle means to engage in the business of a handler, as herein defined.

(g) Processor means any person engaged in the business of treating, freezing, preserving, canning, or otherwise processing or treating, preparing or preserving any agricultural commodities for market, regardless of whether or not such person ultimately distributes these commodities in intrastate or interstate commerce. Processor shall also include any person who treats, manufactures, creates, or produces any product whether considered an agricultural commodity or not, which contains as any component part an agricultural commodity as described herein.

**Section 2. Section Amended.**

Section 5-5-8, Utah Code Annotated 1953, as amended by Chapter 8, Laws of Utah 1959, is amended to read:

**5-5-8. Expenses—Assessment—Collection and Disbursement.**

(a) Each order issued by the commissioner under this title shall

provide that each producer, processor, or handler subject thereto shall pay to any board of control established under such order such producer's, processor's, or handler's pro rata share of such expenses as the commissioner may find will necessarily be incurred by such board during the period; specified by him for the maintenance and functioning of such board. The commissioner may in his discretion for convenience of collection require processors or handlers to collect and remit such expenses from producers on a pro rata basis and in that event the commissioner or board may look directly to such processors or handlers for payment and exercise the collection remedies hereinafter provided directly against such processors or handlers. Any such board may maintain in its own name a suit against any producer, processor, or handler for the collection of such producer's, processor's, or handler's pro rata share of expenses, or such board may elect to bring injunctive proceedings against such non-paying producer, processor, or handler as provided in this act.

(b) The commissioner of agriculture may require that a board of control shall reimburse the commissioner for such funds only as are expended by the commissioner in performing his duties, as provided in this act, but shall include only reimbursement by a board of control of funds actually expended in connection with the particular order administered by such board.

(c) Any board of control established pursuant to this act is authorized to incur such expenses as are necessary to carry out its functions. Such board shall receive and disburse all funds received by it pursuant to paragraph (a) of this section. Any funds remaining at the end of a fiscal year over and above the necessary expenses of said board of control may be divided among all persons from whom such funds are collected, or, at the discretion of the board, such amounts may be applied to the necessary expenses of the board for the continuation of its program during the next succeeding fiscal year, and in such case the board shall credit all persons from whom such funds were collected with their proper proportions thereof.

(d) Assessments made and moneys collected under the provisions of this section shall be divided into assessments and funds for administrative purposes, advertising and promotional purposes, and for research purposes. Such assessments and funds shall be used solely for the purpose for which they are collected; provided that funds remaining at the end of a fiscal year may be used in the succeeding fiscal year.

Approved March 19, 1963.

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## BANKS AND BANKING

### CHAPTER 7

S. B. No. 15

(Passed March 12, 1963. In effect May 14, 1963)

#### BANKING DEPARTMENT

An Act Amending Sections 7-1-1, 7-1-6, 7-1-7 and 7-1-9, Utah Code Annotated 1953, 7-1-10, Utah Code Annotated 1953, as Amended by Chapter 7, Laws of Utah 1953, and Chapter 11, Laws of Utah 1959, 7-1-26 and 7-1-28, Utah Code Annotated 1953, 7-3-6, Utah Code Annotated



1953, as Amended by Chapter 8, Laws of Utah 1953, and Chapter 7, Laws of Utah 1957, 7-3-10, Utah Code Annotated 1953, 7-3-32, Utah Code Annotated 1953, as Amended by Chapter 11, Laws of Utah 1957, 7-3-33, 7-3-34 and 7-3-36, Utah Code Annotated 1953, and Enacting a New Section to Be Known as Section 7-3-32.5, Utah Code Annotated 1953, Relating to the State Banking Department, Banking, Branch Banks, Commercial and Savings Banks, and Authorizing Banks to Own an Interest in Bank Service Corporations as Defined in This Act.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 7-1-1, Utah Code Annotated 1953, is amended to read:

**7-1-1. Bank Commissioner—Appointment—Qualifications.**

(1) There shall be a state banking department which shall have charge of the execution of the laws of this state relating to banks and other financial institutions subject to this title and relating to the business conducted by each.

(2) The chief officer of the state banking department shall be the bank commissioner who shall be appointed by the governor by and with the consent of the senate. He shall hold office for a term of four years and until his successor is appointed and qualified, but he shall be subject to removal at the pleasure of the governor.

(3) The bank commissioner shall be a resident of this state and a citizen of the United States and shall have had sufficient experience in banking in an executive or administrative capacity or as an employee of a state or federal bank supervisory agency to demonstrate his qualifications and fitness to perform the duties of his office.

(4) The salary of the bank commissioner shall be fixed by the governor in accordance with standards adopted by the department of finance, and in addition thereto he may be allowed actual traveling expenses necessarily incurred in attending to official business. He shall qualify by taking the constitutional oath of office and by giving to the state a bond in such amount and in such form as shall be prescribed by the department of finance, conditioned for the faithful performance of his duties. The premiums on such bond shall be paid by the state.

**Section 2. Section Amended.**

Section 7-1-6, Utah Code Annotated 1953, is amended to read:

**7-1-6. Examiners—Appointment—Qualifications.**

The bank commissioner, with the advice and consent of the governor, may appoint such examiners as shall be required for the proper conduct of the banking department; one of whom he may designate as chief examiner at a salary to be fixed in accordance with standards adopted by the department of finance, who in the absence or disability of the bank commissioner shall exercise all of the powers of the bank commissioner, except those required of him as a member of any board. Such examiners shall hold their respective positions during the pleasure of the bank commissioner. Before entering upon his duties such exami-

ner shall give to the state a corporate surety bond in such form and in such amount as shall be determined by the state department of finance, conditioned for the faithful performance of his duties. The premium on such bond shall be paid by the state. Such examiners shall not be interested directly or indirectly in any institution under the supervision of the banking department. They shall perform such duties as are prescribed by this title or that may be assigned to them by the bank commissioner. The bank commissioner may also with the approval of the finance commission employ such clerical help as may be necessary for the proper carrying on of the work of the banking department. The salaries of examiners and of such assistants shall be fixed in accordance with salary standards adopted by the department of finance and shall be payable monthly as the salaries of other state employees. All actual and necessary traveling expenses of the examiners and clerks incurred in the discharge of their duties shall be fully itemized upon proper vouchers and certified by the bank commissioner to the board of examiners to be audited and allowed as other claims against the state.

### **Section 3. Section Amended.**

Section 7-1-7, Utah Code Annotated 1953, is amended to read:

#### **7-1-7. Institutions Under Banking Department.**

All banks, all loan and trust corporations, all building and loan associations, all industrial loan companies, all credit unions, all small loan businesses required to obtain a license under any provision of law, and all bank service corporations shall be under the supervision of the banking department, and shall be subject to examination by the bank commissioner and the examiners.

### **Section 4. Section Amended.**

Section 7-1-9, Utah Code Annotated 1953, is amended to read:

#### **7-1-9. Members of Federal Reserve System—Other Federal Agencies.**

The Bank Commissioner may, in his discretion, accept examinations of any bank or trust company which are made by examiners of the Federal Reserve Board or examiners of the Federal Deposit Insurance Corporation in lieu of the examinations required under the laws of this state. The bank commissioner may likewise in his discretion accept an examination of a building and loan association made by the Federal Home Loan Bank System, the Federal Savings and Loan Insurance Corporation or other federal agency authorized by federal law to examine such companies.

### **Section 5. Section Amended.**

Section 7-1-10, Utah Code Annotated 1953, as amended by Chapter 7, Laws of Utah 1953, and Chapter 11, Laws of Utah 1959, is amended to read:

#### **7-1-10. Fees—Payable for Supervision.**

All financial institutions under the supervision of the banking department of the state of Utah shall pay to the bank commissioner of the state of Utah for the fiscal year beginning July 1, 1963 and annually thereafter, the fees for the cost of supervision and examination according to the following schedule, to-wit:

### 1 Banking Institutions

(a) Basic fee: \$100.00 plus \$100.00 for each branch bank or branch office at which deposits are received, checks cashed and money lent.

(b) Additional fee: An additional fee computed upon the basis of aggregate assets as shown upon the quarterly report to be submitted to the bank commissioner on or before January 10th and at the following maximum rates:

Upon the first \$1,000,000.00 of aggregate assets so shown, \$2.00 per \$10,000.00;

Upon the second \$1,000,000.00 of such assets \$1.00 per \$10,000.00;

Upon the next \$8,000,000.00 of such assets 75 cents per \$10,000.00;

Upon the next \$10,000,000.00 of such assets 50 cents per \$10,000.00;

On all over \$20,000,000.00 of such assets 25 cents per \$10,000.00.

The bank commissioner shall annually estimate the expenses of his office attributable to the supervision and examination of banking institutions exclusive of the trust department in such institutions, and shall annually assess all banking institutions subject to his supervision in such amount, computed in accordance with the foregoing schedule as (including any unexpected balances) will raise the amount of such estimate. Any reduction from the foregoing rates shall be such as to preserve the same relative variation in the basis of assessments computed upon aggregate assets as is expressed in the foregoing schedule.

(c) For examination of trust departments in banking institutions an additional per diem charge at a rate to be annually fixed by the bank commissioner, not exceeding \$40.00 for each examiner, shall be assessed upon all banking institutions maintaining trust departments.

### 2 Building and Loan Associations

(a) Basic fee:

Where the aggregate assets of the building and loan association are \$1,000,000.00 or less, \$100.00 per annum.

Where the aggregate assets of the building and loan association exceed \$1,000,000.00 but do not exceed \$5,000,000.00, \$225.00 per annum.

Where the aggregate assets of the building and loan association exceed \$10,000,000.00, \$500.00 per annum.

Where the aggregate assets of the building and loan association exceed \$5,000,000.00 but do not exceed \$10,000,000.00, \$400.00 per annum.

(b) Additional fee: For examination of building and loan associations an additional per diem charge at a rate to be annually fixed by the bank commissioner not exceeding \$40.00 for each examiner, shall be assessed upon all such associations.

### 3 Industrial Loan Corporations

(a) Basic fee: \$100.00 plus \$100.00 for each branch office.

(b) Additional fee: For each examiner, not exceeding \$40.00 per diem.

4 Small loan licensees, for each examiner, not exceeding \$40.00 per diem.

### 5 Cooperative Banking

(a) Basic fee: Where the aggregate assets of the credit union are \$15,000.00 or less, \$15.00 per annum.

Where the aggregate assets of the credit union exceed \$15,000.00 but do not exceed \$30,000.00, \$37.50 per annum.

Where the aggregate assets of the credit union exceed \$30,000.00 but do not exceed \$60,000.00, \$75.00 per annum.

Where the aggregate assets of the credit union exceed \$60,000.00 but do not exceed \$100,000.00, \$112.50 per annum.

Where the aggregate assets of the credit union exceed \$100,000.00, \$150.00 per annum.

(b) Additional fee: For each examiner \$2.50 per hour, plus 5 cents for each member of the credit union who is a member on the date of examination.

6 For processing an application for approval of articles of incorporation of a bank, loan and trust company, building and loan corporation or industrial loan corporation, \$250.00, to be paid at the time of filing.

7 For processing an application to establish a branch office for any bank, building and loan corporation or industrial loan corporation, \$250.00, to be paid at the time of filing, such fee shall be in lieu of any other fee for branch applications specified in this title.

All per diem fees shall be paid promptly upon order of the bank commissioner after completion of an examination. All other fees, unless otherwise provided, shall be paid to the state bank commissioner semi-annually on the first day of July and the first day of January of each year except those of the industrial loan corporations and the credit unions which shall be paid on or before the first day of July of each year.

The fees and assessments provided by this section shall be in addition to any other fee or tax imposed by law.

#### **Section 6. Section Amended.**

Section 7-1-26, Utah Code Annotated 1953, is amended to read:

#### **7-1-26. Approval of Articles of Incorporation.**

(1) The bank commissioner shall have discretionary power in the approval of articles of incorporation of institutions subject to the supervision of the banking department and applications for licenses to transact in this state any business subject to such supervision, and may refuse to grant his approval when the plan of operation does not comply with the laws of this state governing such institution or business, or with accepted and prevailing practices, or when the incorporators or organizers or any of them shall not be of such character, responsibility and general fitness as to warrant the belief that the business will be honestly conducted in accordance with law and for the best interests of the members, customers and depositors of the institution, or when the location or field of operation of the proposed business shall be in such close proximity to an established business subject to this title that such established business might be unreasonably interfered with and the support of the new business would be such as to make improbable its success, or when other good and sufficient reasons exist for such refusal.

(2) An application for approval of articles of incorporation of a bank, loan and trust company or industrial loan corporation shall be set forth in such form and contain such information as the bank commissioner may reasonably require. Upon receipt of an application and not less than thirty days before acting on an application the bank com-

missioner shall give notice thereof by publication in three successive issues in a newspaper of general circulation in the county in which the principal place of business is to be established. Any interested person may file a written protest to the granting of such application stating the grounds therefor. The bank commissioner may, at his discretion, hold a public hearing on any application whether or not a protest is filed. Any application not acted upon within six months from the date of filing shall be deemed denied, and the bank commissioner shall thereupon issue a written decision denying the application.

(3) The decision of the bank commissioner granting or denying an application shall be in writing and state the reasons therefor. A copy of the decision shall be mailed by the bank commissioner to the applicant and protestants. The bank commissioner may impose such reasonable conditions on the granting of an application as he deems necessary for the public welfare and to carry out the purposes of this act.

(4) Any applicant for an approval of articles of incorporation, a permit to establish a branch, or a license to transact any business subject to the supervision of the banking department or any protestant to such application, feeling aggrieved by the act, decision or ruling of the bank commissioner with respect thereto, shall be entitled to judicial review thereof by filing, within thirty days after the decision or ruling of the bank commissioner is issued, any applicable form of action (including actions for declaratory judgment or writs of prohibitory or mandatory injunction), in the district court of the district in which the office of the bank commissioner is located. The reviewing court shall have power to hold unlawful and set aside any act, decision or ruling of the bank commissioner found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

(5) Any approval by the bank commissioner of articles of incorporation, a license to conduct business or an application to establish a branch shall be deemed revoked unless the business so authorized is open and operating within one year of the date of such approval, except that the bank commissioner, on written application made before the expiration of such period and for good cause shown, may extend the date for activation for additional periods not to exceed six months each.

(6) It shall be unlawful to obtain, for the purpose of resale, a charter, license or permit to operate any bank or other financial institution under the supervision of the banking department. The charter, license or permit may be deemed revoked and the bank commissioner may take possession of the business and property of any bank or other financial institution under his supervision as provided in chapter 2 of this title, if, within a period of five years after the approval of the articles of incorporation or the granting of a license or permit to do business by the bank commissioner, the assets or the license to do business or more than 49 per cent of the authorized capital stock of such bank or other financial institution is sold or exchanged, or if, within such period, such bank or other financial institution merges or consolidates with another bank or other financial institution, unless the bank or other financial institution involved shall establish upon written application to the bank commissioner and by the clear preponderance of the evidence, that its charter, license or permit was not obtained for the purpose of resale

or that such sale, exchange, merger or consolidation is necessary to protect depositors or prevent failure.

**Section 7. Section Amended.**

Section 7-1-28, Utah Code Annotated 1953, is amended to read:

**7-1-28. Prohibited Acts.**

(1) Neither the bank commissioner, nor any examiner of the state banking department shall do any of the following with respect to any bank or other financial institution under the supervision of the banking department.

(a) Be indebted, directly or indirectly, as a borrower, accommodation indorser, surety or guarantor to any such bank or other financial institution or to an individual or individuals or any other legal or commercial entity or entities owning or controlling a bank or other financial institution.

(b) Be an officer, director or employee of any bank or other financial institution or of an individual or individuals or any other legal or commercial entity or entities owning or controlling a bank or other financial institution.

(c) Own or deal in, directly or indirectly, the shares or obligations of any such bank or other financial institution or of a corporation owning or controlling a bank or financial institution.

(d) Receive, directly or indirectly, from such bank or other financial institution or any officer, director or employee thereof, any salary, fee or compensation.

(e) Be interested in or engage in the negotiation of any loan to, obligation of or accommodation for another person to or with any such bank or other financial institution.

(2) Notwithstanding subsection (1) of this section, the bank commissioner or any examiner or employee of the state banking department may (a) have and maintain a commercial or savings account in any bank or other financial institution in the state or be a lessee of a safe deposit box on the same terms and conditions as are available to the public generally; (b) be indebted to a bank or other financial institution under the supervision of the department upon (i) a mortgage loan upon the mortgagor's own home; (ii) an installment debt transferred to a bank or other financial institution in the regular course of business by a seller of consumer goods; and (iii) continue to receive payments under a regularly established pension plan of general application for fully retired employees of a bank or other financial institution under the supervision of the department.

(3) Every person who violates this section shall forfeit his office or employment, and is guilty of a misdemeanor.

**Section 8. Section Amended.**

Section 7-3-6, Utah Code Annotated 1953, as amended by Chapter 8, Laws of Utah 1953, and Chapter 7, Laws of Utah 1957, is amended to read:

**7-3-6. Business—Branches—Violation.**

The business of every bank shall be conducted only at its banking

house and every bank shall receive deposits and pay checks only at its banking house except as hereinafter provided.

With the consent of the bank commissioner any bank having a paid-capital and surplus of not less than \$60,000 may establish and operate one branch for the transaction of its business; provided, that for each additional branch established there shall be paid in an additional \$60,000 (capital and surplus).

All banking houses and branches shall be located either within the corporate limits of a city or town, or within unincorporated areas of a county in which a city of the first class is located.

Except in cities of the first class, or within unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank. No unit bank organized and operating at a point where there are other operating banks, state or national, shall be permitted to be acquired by another bank for the purpose of establishing a branch until such bank shall have been in operation as such for a period of five years.

The term "branch" as used in this act shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business at which deposits are received or checks paid or money lent.

Any bank desiring to establish one or more branches or offices shall file a written application therefor in such form and containing such information as the bank commissioner may reasonably require. No bank shall be permitted to establish any branch or office until it shall first have been shown to the satisfaction of the bank commissioner that the public convenience and advantage will be subserved and promoted by the establishment of such branch or office. The bank commissioner may, at his discretion, hold a public hearing on any application to establish a branch. He shall give notice of such hearing by publication in three successive issues in a newspaper of general circulation in the county in which the branch is to be established. The decision of the bank commissioner granting or denying an application to establish a branch shall be in writing, state the reasons therefor, and shall be mailed to the applicant and all protestants. The bank commissioner may by order permitting the establishment of such branch or office designate and limit the character of work and service which may therein be performed.

No branch shall be established at a location outside the corporate limits of a city or town in such close proximity to an established bank or branch as to unreasonably interfere with the business thereof.

Any corporation or officer thereof violating any of the provisions of this section is guilty of a misdemeanor.

### **Section 9. Section Amended.**

Section 7-3-10, Utah Code Annotated 1953, is amended to read:

#### **7-3-10. Minimum of Subscribed Capital Stock.**

In no case shall the subscribed capital stock of any bank be less than \$25,000, and in cities having from 5,000 to 25,000 inhabitants no less than \$50,000, and in cities having from 25,001 to 50,000 inhabitants

not less than \$75,000, and in cities having more than 50,000 inhabitants not less than \$100,000; and in addition to said required amounts of capital stock each and every bank hereafter incorporated in this state, shall, before commencing to do any business, provide a surplus or expense fund of not less than twenty-five per cent of the amount of its capital stock as herein above provided, the said surplus to become part of the one hundred per cent surplus required by section 7-3-26, Utah Code Annotated 1953.

**Section 10. Section Amended.**

Section 7-3-32, Utah Code Annotated 1953, as amended by Chapter 11, Laws of Utah 1957, is amended to read:

**7-3-32. Stock Purchases by Banks.**

Any bank may purchase, own and hold, and sell or otherwise dispose of, any of the shares of the capital stock of the Federal Deposit Insurance Corporation, the Federal Reserve Bank of the Twelfth Federal Reserve District, the stock of any corporation or corporations organized under the laws of the United States for purposes similar to those of the federal reserve banks or the Federal Deposit Insurance Corporation, the Federal National Mortgage Association, the stock of any safe deposit company, the stock of any corporation owning the banking house in which any place of business of such bank is located, the stock of any bank service corporation performing services for such bank, and the stock of such other corporation as shall be acquired by such bank in satisfaction of or on account of debts previously contracted in the course of its business.

**Section 11. Section Enacted.**

Section 7-3-32.5, Utah Code Annotated 1953, is enacted to read:

**7-3-32.5. Bank Service Corporation.**

(1) The term "bank service corporation" means a corporation organized to perform bank services for two or more banks, each of which owns part of the capital stock of such corporation. The term "bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

(2) If stock in a bank service corporation has been held by two or more banks, and one or more of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it.

(3) Every bank service corporation shall be subject to visitation and examination as provided in section 7-1-7, Utah Code Annotated 1953.

**Section 12. Section Amended.**

Section 7-3-33, Utah Code Annotated 1953, is amended to read:

**7-3-33. Cash Reserve Required—Commercial Banks.**

Every commercial bank shall at all times carry in cash or its equiva-



lent, including demand credits in other banks, a money reserve in an amount equal to fifteen per cent of the aggregate of its deposits and demand liabilities; provided, that in cities having a population of 50,000 or more a money reserve of not less than twenty per cent shall be maintained.

**Section 13. Section Amended.**

Section 7-3-34, Utah Code Annotated 1953, is amended to read:

**7-3-34. Cash Reserves Required—Savings Banks.**

Every savings bank shall at all times carry in cash or its equivalent, including demand credits in other banks, a money reserve in an amount equal to five per cent of its deposit liabilities.

**Section 14. Section Amended.**

Section 7-3-36, Utah Code Annotated 1953, is amended to read:

**7-3-36. Right to Change Reserve Requirements.**

Whenever the state bank commissioner, after consulting with the state depository board, and with the approval of said board, shall determine that the maintenance of sound banking practices or the prevention of injurious credit expansion or contraction makes such action advisable, he may by general regulation, change from time to time the requirements as to reserves against demand or time deposits or both in banking institutions doing business in this state which are not members of the Federal Reserve System. The reserves so specified shall be not less than those required by regulations of the Board of Governors of the Federal Reserve System for members of the Federal Reserve System nor more than twice those required by sections 7-3-33, 7-3-34 and 7-3-35.

**Section 15. Proceedings Before Effective Date.**

This act does not affect right and duties that mature, penalties that are incurred, and proceedings that are begun, before its effective date.

**Section 16. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved March 14, 1963.

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## CEMETERIES

### CHAPTER 8

H. B. No. 149

(Passed March 8, 1963. In effect May 14, 1963)

#### CEMETERY MAINTENANCE

**An Act Amending Section 8-1-10, Utah Code Annotated 1953, and Enacting Section 8-1-10.5, Utah Code Annotated 1953, Relating to Cemetery Maintenance District Commissioners; Providing for Election of Such Commissioners at the Same Time as the General Election and**

**for Their Terms of Office and Prescribing Who Shall Pay the Costs of their Election.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 8-1-10, Utah Code Annotated 1953, is amended to read:

**8-1-10. Cemetery Maintenance District Commissioners.**

An election to fill the vacancies on the board of cemetery maintenance district commissioners shall be held on the first Tuesday after the first Monday of November, 1964, and every alternate year thereafter. Such election shall be held in conformity with the general election laws of this state and held as part of the general election. A separate non-partisan ballot shall be provided for each voter. The board of cemetery maintenance commissioners shall have power to make such regulations for the conduct of such election as are not inconsistent with any statutory provisions. The term of office of the present commissioner from cemetery maintenance subdistrict one shall be extended to expire on the first Tuesday after the first Monday of November, 1968, on which date one commissioner shall be elected as his successor for a term of six years. The term of office of the present commissioner from cemetery maintenance district two shall be extended to expire on the first Tuesday after the first Monday of November, 1964, on which date one commissioner shall be elected as his successor for a term of six years. The term of office of the present cemetery maintenance district three shall be extended to expire on the first Tuesday after the first Monday of November, 1966, on which date one commissioner shall be elected as his successor for a term of six years. Thereafter, all commissioners shall each be elected for a term of six years.

**Section 2. Section Enacted.**

Section 8-1-10.5, Utah Code Annotated 1953, is enacted to read:

**8-1-10.5. Costs of Elections.**

All costs and expenses incurred by any county in the state the conduct of the election and canvassing of election returns for members of the cemetery maintenance district within such county shall be paid by the cemetery maintenance district from its general funds in the following manner: The board of county commissioners shall determine the costs of elections at which cemetery maintenance district commissioners are elected and shall apportion the costs in the ratio which the number of candidates for cemetery maintenance districts bear to the total number of candidates appearing on all the ballots of election. Such proration shall only apply to the compensation of the judges and personnel of election. Other costs shall be determined for actual expenses incurred in printing ballots and furnishing other supplies for the election of cemetery maintenance district commissioners.

Approved March 14, 1963.

## CHAPTER 9

H. B. No. 75

(Passed March 8, 1963. In effect May 14, 1963)

**CEMETERY BOARD PER DIEM**

**An Act Amending Section 8-4-4, Utah Code Annotated, 1953, as Enacted by Chapter 11, Laws of Utah 1955, Establishing Under the Department of Business Regulation, Department of Registration a Committee for Cemetery Operators, Officers and Owners and Directors of Cemeteries, Fixing the Duties and the Term of Office for Members and Providing Compensation for the Cemetery Board.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 8-4-4, Utah Code Annotated 1953, as enacted by Chapter 11, Laws of Utah 1955, is amended to read:

**8-4-4. Cemetery Board—Powers—Duties.**

(a) There is hereby established under the commission of the department of business regulation, department of registration, a representative committee for cemetery operators, officers and owners and directors of cemeteries to be known as the cemetery board. Said cemetery board shall have the same duties, rights and powers and shall be subject to all provisions, set out in Chapter 1 of Title 58, Utah Code Annotated 1953 applicable to representative committees generally in other trades and professions and not in conflict herewith. Said cemetery board shall consist of five members, who shall be designated by the director of registration as provided in Section 58-1-6, Utah Code Annotated 1953. In designating members of such committee he shall be required to accept recommendations by members who are executives of endowment care cemeteries within the state by members in the cemetery business, and organizations representing endowment care cemeteries as in this act defined. The names of all persons so designated shall be submitted to the governor for confirmation or rejection. The terms of the members first appointed shall expire: Two April 1, 1956, two April 1, 1957, and one April 1, 1958. Thereafter appointments shall be for three years.

(b) Not more than three members of the board shall be appointed only from persons who have had immediately preceding their appointment a minimum of two consecutive years experience in this state in the active administrative management of a cemetery corporation or of a cemetery or as a member of the board of directors thereof for this period and shall at the time of the appointment have the actual and full authority of a president, general manager, vice president, secretary, treasurer, or owner, but they shall hold office only so long as they continue in such active, actual and authoritative capacities. The two-year consecutive period shall be exclusive of time spent in the armed service.

(c) Each member of the board shall receive \$15.00 per diem for each day actually engaged in the work of the board and shall receive his necessary traveling and other expenses. The board shall elect annually from among its members, a chairman and vice-chairman.

(d) The board shall meet at least twice a year or at such other times as it may designate. They may meet at any place within the state. It

shall submit to the director necessary rules and regulations for the administration and enforcement of, and prescribe the form of statements and reports provided for in this act. Said rules and regulations shall be, when adopted by the department of registration, endorsed as a part of its duties and functions.

Approved March 9, 1963.

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## CITIES AND TOWNS

### CHAPTER 10

H. B. No. 53

(Passed February 28, 1960. In Effect May 14, 1963)

#### CONTINUITY OF CITY OFFICERS

**An Act Amending Section 10-1-5, Utah Code Annotated 1953, Relating to the Change in Class of Municipalities; Providing for the Continuity and Election of Officers.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 10-1-5, Utah Code Annotated 1953, is amended to read:

**10-1-5. Change of Class—Officers.**

When any town shall by proclamation of the governor become a city of the third class, or any city of the third class shall in like manner become a city of the second class, or any city of the second class shall in like manner become a city of the first class, the officers then in office shall continue to be the officers of the city until their respective terms of office expire, and until their successors if any shall be duly elected and qualified. When during said change a vacancy in the office of mayor results, the remaining members of the legislative body shall select a mayor from among their number. When new territory is organized as a city or a town becomes a city, otherwise than by proclamation of the governor, the officers first elected shall serve until the next municipal election, and until their successors shall be duly elected and qualified.

Approved March 1, 1963.

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## CHAPTER 11

H. B. No. 161

(Passed March 14, 1963. In effect May 14, 1963)

#### MEETINGS OF CITY COMMISSIONS

**An Act Amending Section 10-6-14, Utah Code Annotated 1953, Providing for Meetings of the Board of City Commissioners of Cities of the First and Second Class.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 10-6-14, Utah Code Annotated 1953, is amended to read:

**10-6-14. Meetings of Board—Distribution of Powers and Duties.**

In cities of the first and second class the board of commissioners shall prescribe the time and place of holding its meetings; provided, that at least three public meetings a week shall be held at such time as may be provided by ordinance. If at any time the business of the city requires a special meeting of the board of commissioners, such meeting may be ordered by a majority of the board or by the mayor or temporary chairman thereof. The order must be signed by the members or mayor or chairman calling such meeting, and must be entered in the minutes of the board. Not less than three hours' notice of such special meeting must be given by the recorder to each member not joining in the order, said notice to be served personally or left at his usual place of abode. All meetings of the board of commissioners, to which any person not a city officer is admitted, must be public. The books, records and accounts must be kept at the office of the city recorder, open at all times during business hours to public inspection.

The board of commissioners shall have power to make and enforce such rules and regulations for the government of the board, the preservation of order and the transaction of business as may be necessary.

The executive and administrative powers, authority and duties in such cities shall be distributed into and among five departments as follows:

- (1) Department of public affairs and finance.
- (2) Department of water supply and waterworks.
- (3) Department of public safety.
- (4) Department of streets and public improvements.
- (5) Department of parks and public property.

Approved March 21, 1963.

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## CHAPTER 12

S. B. No. 13

(Passed February 15, 1963. In effect May 14, 1963)

### SALARIES OF CITY OFFICERS

**An Act Amending Section 10-6-41, Utah Code Annotated 1953, as Amended by Chapter 13, Laws of Utah 1953, Chapter 16, Laws of Utah 1957, and as Amended by Chapter 22, Laws of Utah 1961, Relating to Salaries of Officers of Cities; Providing for Cities to Fix or Change the Compensation of Elective or Appointive Officers by Ordinance After Public Hearing and Notice of Hearing, and Repealing Section 10-6-42, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 10-6-41, Utah Code Annotated 1953, as amended by Chapter 13, Laws of Utah 1953, Chapter 16, Laws of Utah 1957, and as amended by Chapter 22, Laws of Utah 1961, is amended to read:

#### **10-6-41. Salaries—In Cities.**

The elective and appointive officers of cities shall receive such compensation for their services as the governing body may fix by ordinance

adopting compensation or compensation schedules enacted after public hearing.

(1) Upon its own motion the governing body may review or consider the compensation of any officer or officers of the city or a salary schedule applicable to any officer or officers of the city for the purpose of determining whether or not it should be adopted, changed, or amended. In the event that the governing body decides that such compensation or compensation schedules should be adopted, changed, or amended, it shall set a time and place of a public hearing at which all interested persons shall be given an opportunity to be heard.

(2) Notice of the time, place and purpose of the meeting shall be published at least seven days prior thereto by publication in at least one issue of a newspaper published in the county within which the city is situated and generally circulated in the city, if there is one; otherwise, by posting in three conspicuous places within the city.

(3) After the conclusion of the public hearing, the governing body may enact an ordinance fixing, changing, or amending the compensation of any elective or appointive officer of the city or adopting a compensation schedule applicable to any officer or officers.

(4) Any ordinance enacted before this act by a city establishing a salary or compensation schedule for its elective or appointive officers and any salary fixed by Section 10-6-41, Utah Code Annotated 1953, as amended by Chapter 22, Laws of Utah 1961, prior to its repeal by this act, shall remain effective until the city has enacted an ordinance pursuant to the provisions of this act.

(5) The compensation of all city officers shall be paid at least monthly out of the city treasury. None of the provisions of this act shall be deemed to limit or restrict the authority of any city that has adopted or does adopt a charter pursuant to Article XI, Section 5, Utah Constitution, to determine the salaries of its elective and appointive officers or employees.

#### **Section 2. Section Repealed.**

Section 10-6-42, Utah Code Annotated 1953, is hereby repealed.

Approved February 15, 1963.

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### **CHAPTER 13**

H. B. No. 57

(Passed March 8, 1963. In effect May 14, 1963)

#### **REMOVAL OF WEEDS**

**An Act Amending Section 10-11-3, Utah Code Annotated 1953, relating to the Power of Municipalities Through Their Inspectors to Remove Weeds and Other Refuse From Private Property; Providing for the Collection of the Expenses Thereof From the Property Owners.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 10-11-3, Utah Code Annotated 1953, is amended to read:

#### **10-11-3. Neglect of Property Owner—Removal by City.**

If any owner or occupant of lands described in such notice shall fail

or neglect to eradicate, or destroy and remove, such weeds, garbage, refuse, object or structure upon the premises in accordance with such notice, it shall be the duty of the inspector, at the expense of the municipality, to employ necessary assistance and cause such weeds, garbage, refuse, objects or structures to be removed or destroyed. He shall prepare an itemized statement of all expenses incurred in the removal and destruction of same and shall mail a copy thereof to the owner demanding payment within twenty days of the date of mailing. Said notice shall be deemed delivered when mailed by registered mail addressed to the property owner's last known address. In the event the owner fails to make payment of the amount set forth in said statement to the municipal treasurer within said twenty days, the inspector, on behalf of the municipality, may cause suit to be brought in an appropriate court of law or may refer the matter to the county treasurer as hereinafter provided. In the event collection of said costs are pursued through the courts, the municipality may sue for and receive judgment upon all of said costs of removal and destruction together with reasonable attorney's fees, interest and court costs. The municipality may execute on such judgment in the manner provided by law. In the event that the inspector elects to refer the matter to the county treasurer for inclusion in the tax notice of the property owner, he shall make, in triplicate, an itemized statement of all expenses incurred in the removal and destruction of the same and shall deliver the three copies of said statement to the county treasurer within ten days after the completion of the work of removing such weeds, garbage, refuse, objects or structures.

Approved March 11, 1963.

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## CHAPTER 14

H. B. No. 54

(Passed March 14, 1963. In effect May 14, 1963)

### TOWN BONDS

**An Act Amending Section 10-13-22, Utah Code Annotated 1953, Relating to the Maturity of Bonds Issued by Towns and Enacting Section 10-13-22.1 Validating Certain Bonds Now Outstanding, and a Saving Clause.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 10-13-22, Utah Code Annotated 1953, is amended to read:

#### **10-13-22. Borrowing Power—Issuance of Bonds—Payment of Interest.**

The board of trustees of any town may borrow money for corporate purposes in the manner and to the extent allowed by the Constitution, and issue warrants and bonds therefor in such amounts and forms and on such conditions as the board shall determine. The board shall provide for the payment of interest on such bonds as the same shall become due and for a sinking fund for the payment of principal thereof within twenty years after issuing the same; provided, that water and sewer bonds of towns may be issued for a period not exceeding forty

years, The board may issue bonds in place of or to supply means to meet maturing bonds or for the consolidation or refunding of the same.

**Section 2. Section Enacted.**

Section 10-13-22.1, Utah Code Annotated 1953, is enacted to read:

**10-13-22.1. Validating Bonds.**

All water and sewer bonds heretofore issued by towns and now outstanding having maturities longer than twenty years from their date are hereby validated and declared to be legal obligations of said towns, despite the length of such maturities.

**Section 3. Savings Clause.**

If any one or more sections, sentences, clauses, phrases or provisions of this act are for any reason held to be unconstitutional, all remaining parts of this act shall nevertheless continue to be valid and effective, the Legislature hereby declaring that all provisions of this act are severable.

Approved March 21, 1963.

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## CONTRACTORS' BONDS

### CHAPTER 15

H. B. No. 160

(Passed March 14, 1963. In effect May 14, 1963)

### CONTRACTORS' BONDS

**An Act to Provide for the Bonding of Contractors for Public Buildings and Public Works of the State, State Agencies, Counties, Cities, Towns, Municipal Corporations, Townships, School Districts, Public Educational Institutions, Political Subdivisions, and Other Public Instrumentalities: and to Repeal Sections 14-1-1, 14-1-2, 14-1-3, and 14-1-4, Utah Code Annotated 1953, Relating to Bonding Requirements on Public Contracts and Attorneys Fee on Actions Under Said Bonds.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Contracts—Performance—Payment Bonds.**

Before any contract for the construction, alteration, or repair of any public building or public work or improvement of the State of Utah, or of any county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or of any officer, board, commission, institution, or agency of the foregoing, is awarded to any person, he shall furnish to the State of Utah, or to such county, city, town, municipal corporation, township, school district, public educational institution, or other political subdivision, public authority, or public instrumentality, or to such officer, board, commission, institution, or agency thereof, bonds which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond in any amount to be fixed by the contracting body, but in no event less than 50% of the amount con-



ditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Said bond shall be solely for the protection of the public body awarding the contract.

(2) A payment bond in an amount to be fixed by the contracting body but in no event less than 50% of the contract amount, solely for the protection of persons supplying labor or materials to the contractor or his subcontractors in the prosecution of the work provided for in such contract.

Each bond shall be executed by a surety company or companies duly authorized to do business in this state. In the case of contracts of the state or a department, board, commission, institution, or agency thereof of aforesaid bonds shall be payable to the state, or particular state agency where authorized. In case of all other contracts subject to this act, the bonds shall be payable to the public body concerned.

Said bonds shall be filed in the office of the department, board, commission, institution, agency or other contracting body awarding the contract.

Nothing in this section shall be construed to limit the authority of the state of Utah or other public body hereinabove mentioned to require a performance bond or other security in addition to these, or in cases other than cases specified in this act.

It shall be illegal for the invitation for bids, or any person acting or purporting to act, on behalf of the contracting body to require that such bonds be furnished by a particular surety company, or through a particular agent or broker.

## **Section 2. Claims for Unpaid Materials—Notice.**

Every claimant who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which a payment bond is furnished under this act, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action to final judgment for the sum or sums justly due him and have execution thereon; provided, however, that any such claimant having a direct contractual relationship with a subcontractor of the contractor furnishing such payment bond but no contractual relationship expressed or implied with such contractor shall not have a right of action upon such payment bond unless he has given written notice to such contractor within ninety days from the date on which such claimant performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or supplied or for whom the labor was done or performed. Each notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business or at his residence.

The contracting body and the agent in charge of its office, is authorized and directed to furnish, to anyone making application therefor who

submits an affidavit that he has supplied labor, or materials for such work and payment therefor has not been made or that he is being sued on any such bond, or that it is the surety thereon, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting body or the agent in charge of its office fixes to cover the actual cost of preparation thereof.

Every suit instituted on the aforesaid payment bond shall be brought in the appropriate court in the political subdivision in which the contract was to be performed and not elsewhere; provided, however, that no such suit shall be commenced after the expiration of one year from the date on which the claimant performed the last of the labor or furnished or supplied the last of the material for which such suit is brought, except, that if the claimant is a subcontractor of the contractor, no such suit shall be commenced after the expiration of one year from the date on which final payment under the subcontract became due.

### **Section 3. Time Notice to Be Given.**

Any public body subject to this act which shall fail or neglect to obtain the delivery of the payment bond as required by this act, shall, upon demand, itself promptly make payment to all persons who have supplied materials or performed labor in the prosecution of the work under the contract, and any such creditor shall have a direct right of action upon his account against such public body in any court having jurisdiction in the county in which the contract was to be performed and executed which action shall be commenced within one year after the furnishings of materials or labor.

### **Section 4. Attorneys Fees or Costs.**

In any action brought upon either of the bonds provided herein, or against the public body failing to obtain the delivery of the payment bond, the prevailing party, upon each separate cause of action, shall recover a reasonable attorney's fee to be taxed as costs.

### **Section 5. Terms of Act.**

The terms "person" and "claimant" and the masculine pronoun as used in this act shall include individuals, associations, copartnerships, or corporations.

### **Section 6. Sections Repealed.**

Sections 14-1-1, 14-1-2, 14-1-3, and 14-1-4, Utah Code Annotated 1953, as amended, are hereby repealed.

Approved March 22, 1963.

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## **CHAPTER 16**

H. B. No. 18

(Passed February 14, 1963. In effect May 14, 1963)

## **CONTRACTOR BONDS**

**An Act Enacting a New Section to Be Known as Section 14-2-3, Utah**

**Code Annotated 1953, Providing for Attorneys' Fees in Actions on a Bond.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 14-2-3. Section Enacted.**

14-2-3, Utah Code Annotated 1953, is enacted to read as follows:

**14-2-3. Attorney's Fees.**

In any action brought upon the bond provided for under this chapter the successful party shall be entitled to recover a reasonable attorney's fee to be fixed by the court, which shall be taxed as costs in the action.

Approved February 14, 1963.

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## CORPORATIONS

### CHAPTER 17

S. B. No. 1.

(Passed March 6, 1963. In effect July 1, 1963)

#### NON-PROFIT CORPORATION CODE

**An Act Relating to Non-profit Corporations and Cooperative Associations; Revising the Non-profit Corporation Laws by Enacting a New Act to Be Known as the Utah Non-profit Corporation and Cooperative Associations Act; Providing for the Organization and Operation of Non-profit Corporations and Cooperative Associations and Their Powers and Purposes; Providing for the Rights and Obligations of Members, Trustees and Officers; Prohibiting Loans to Trustees or Officers or the Payment of Dividends; Providing for the Filing of Articles of Incorporation and of Amendments Thereto; Providing for Mergers and Consolidations of Non-profit Corporations and Cooperative Associations and the Dissolution Thereof; Providing for the Powers and Obligations of Foreign Non-profit Corporations and Cooperative Associations and Their Rights of Withdrawal; Providing for Annual Reports to the Secretary of State and for Fees and Penalties; and Repealing Sections 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5, 16-6-6, 16-6-7, 16-6-8, 16-6-9, 16-6-10, 16-6-11, 16-6-12 and 16-6-16, Utah Code Annotated 1953, 16-6-17, Utah Code Annotated 1953, as Enacted by Chapter 24, Laws of Utah 1957 and 16-10-142, Utah Code Annotated 1953, as Enacted by Chapter 28, Laws of Utah 1961.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Utah Non-profit Corporation Act.**

This act shall be known and may be cited as the "Utah Non-Profit Corporation Cooperative Association Act."

**Section 2. Definitions.**

As used in this act:

(1) The words "corporation" or "domestic corporation" mean a non-profit corporation subject to the provisions of this act, except a foreign corporation.

(2) The words "foreign corporation" mean a non-profit corporation organized under laws other than the laws of this state.

(3) The words "non-profit corporation" mean a corporation no part of the income of which is distributable to its members, trustees or officers, or a non-profit cooperative association.

(4) The words "articles of incorporation" include the original articles of incorporation and all amendments thereto, and include articles of merger.

(5) The word "by-laws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) The word "member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.

(7) The words "governing board" mean the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(8) The word "trustee" means one of the group of persons on the governing board irrespective of the name by which such person is designated.

(9) The word "insolvent" means inability of a corporation to pay its debt as they become due in the usual course of its affairs.

(10) The words "cooperative association" means a corporation organized or existing under this act subject to the provisions of Section 91 hereof.

### **Section 3. Applicability.**

(1) The provisions of this act relating to domestic corporations shall apply to:

(a) All corporations organized hereunder;

(b) All non-profit corporations organized and existing under the laws of this state on the effective date of this act, including all corporations not for pecuniary profit organized under any of the provisions of Chapter 6 of Title 16, Utah Code Annotated 1953, which are repealed by this act; and

(c) Mutual irrigation, canal, ditch, reservoir and water companies and water users associations organized and existing under the laws of this state on the effective date of this act.

(2) The provisions of this act relating to foreign corporations shall apply to:

(a) All foreign non-profit corporations transacting business in this state for a purpose or purposes for which a corporation might be organized under this act; and

(b) All foreign non-profit corporations which qualified to do business in this state under the provisions of Chapter 8 of Title 16, Utah Code Annotated 1953, which provisions were repealed by Chapter 28, Laws of Utah 1961.

This act shall not apply to corporations sole nor to domestic or foreign corporations governed by the Uniform Agricultural Cooperative Association Act.

**Section 4. Purposes.**

Corporations whose object is not pecuniary profit may be organized under this act for any lawful purposes, including, but without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; recreational; scientific; agricultural; horticultural; animal husbandry; water development, diversion, storage, distribution or use; professional, commercial, industrial or trade association; cooperative association; and labor union or association; but organizations subject to any of the provisions of the insurance, banking, savings and loan or credit union laws of this state may not be organized under this act.

**Section 5. Powers.**

Each non-profit corporation shall have power:

- (1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.
- (2) To sue and be sued, complain and defend, in its corporate name.
- (3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
- (5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (6) To lend money to its employees other than its officers and trustees.
- (7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.
- (8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
- (9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.
- (10) To conduct its affairs, transact its business, carry on its operations, and have offices and exercise the powers granted by this act in any state, territory, district, or possession of the United States, or in any foreign country.
- (11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.
- (12) To make and alter by-laws, or resolutions, not inconsistent

with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(14) To indemnify any trustee or officer or former trustee or officer of the corporation, or any person who may have served at its request as a trustee, director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such trustee, director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such trustee, director or officer may be entitled, under any by-law, agreement, vote of the governing board or members or otherwise.

(15) To voluntarily dissolve and distribute its assets in accordance with the provisions of this act.

(16) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized, including the right to raise funds by such means or methods as the governing board may deem advisable, not inconsistent with law or its articles of incorporation or by-laws.

#### **Section 6. Definition of Ultra Vires.**

No act of non-profit corporation and no conveyance or transfer of real or personal property to or by such a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or a trustee against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit against the incumbent or former officers or trustees of the corporation for exceeding their authority.

(3) In a proceeding by the attorney general, as provided in this act, to dissolve the corporation, or in a proceeding by the attorney

general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general.

### **Section 7. Corporate Name.**

The corporate name of a non-profit corporation:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state, or any trade-mark or service mark registered in this state, unless there has been filed with the Secretary of State the written consent to such similarity executed by such corporation or by the holder of such reserved or registered corporate name, trademark or service mark.

(3) Shall be transliterated into letters of the English alphabet, if it is not in English.

### **Section 8. Reservation of Name.**

The exclusive right to use of a corporate name may be reserved by filing in the office of the Secretary of State an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of one hundred twenty days.

The right to the exclusive use of a specified corporate name so reserved may be assigned by filing in the office of the secretary of state a notice of such assignment executed by the person for whom such name was reserved and specifying the name and address of the transferee.

### **Section 9. Members.**

A non-profit corporation may have one or more classes of members, or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, the qualifications and rights of the members of each class and any provisions for termination or forfeiture of membership shall be set forth in the articles of incorporation or the by-laws. The articles of incorporation or the by-laws may contain provisions relating to the imposition of dues, assessments or other charges on members and provisions restricting the transfer of memberships.

Members are not individually or personally liable for the debts or obligations of the corporation.

### **Section 10. Meetings of Members.**

Meetings of members may be held at such place, within or without this state, as may be determined from time to time by the governing board or as may be provided in the by-laws. In the absence of any such determination or provision, all meetings shall be held at the principal office of the corporation in this state.

An annual meeting of the members shall be held at such time as

may be provided in the articles of incorporation or the by-laws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation. If an annual meeting is not held within three months after the time provided in the articles of incorporation or by-laws, an annual meeting may be called by any ten members having voting rights or by members having the right to cast ten per cent of the votes entitled to be cast at such meeting, whichever is greater.

Special meetings of the members may be called by the principal officer of the corporation or by the governing board. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having the right to cast one-third of the votes entitled to be cast at such meeting.

#### **Section 11. Notice of Members' Meetings.**

Unless some other method of giving notice is prescribed by the articles of incorporation or the by-laws, written or printed notice stating the place, day and hour of all meetings of members and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten days before the date of the meeting, either personally or by mail, by or at the direction of any of the officers of the corporation, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

#### **Section 12. Quorum of Members.**

The articles of incorporation or by-laws may provide the number or percentage of members entitled to vote represented in person or by proxy or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, the members present in person or represented by proxy shall constitute a quorum at any meeting of members. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the members unless a greater proportion is required by this act, the articles of incorporation or the by-laws.

#### **Section 13. Voting by Members.**

The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member may vote in person or, unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. Where trustees or officers are to be elected by members, the governing board by



resolution or the by-laws may provide that such elections may be conducted by mail.

#### **Section 14. Greater Voting Requirements.**

Whenever, with respect to any action to be taken by the members or trustees of a non-profit corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or trustees, as the case may be, than required by this act with respect to such action, the provisions of the articles of incorporation shall control.

#### **Section 15. Waiver of Notice.**

Whenever any notice is required to be given to any member or trustee of a non-profit corporation under the provisions of this act or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

#### **Section 16. Action Without Meeting.**

Any action required by this act to be taken at a meeting of the members or trustees of a non-profit corporation, or any action which may be taken at a meeting of the members or trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the trustees, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of the state under this act.

#### **Section 17. Governing Board.**

The affairs of a non-profit corporation shall be managed by a governing board. Trustees need not be residents of this state or members of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for trustees.

#### **Section 18. Number and Election of Trustees.**

The number of trustees of a non-profit corporation shall be not less than three. Subject to such limitation, the number of trustees shall be fixed by the by-laws, except as to the number of the initial governing board, which number shall be fixed by the articles of incorporation. The number of trustees may be increased or decreased from time to time by amendment to the by-laws, unless the articles of incorporation provide that a change in the number of trustees shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent trustee. In the absence of a by-law fixing the number of trustees, the number shall be the same as that stated in the articles of incorporation.

The articles of incorporation or the by-laws may provide for the manner of election or appointment of trustees, their term of office, and division into classes, if any, and the procedure for their removal. In the absence of a provision prescribing the manner of election or ap-

pointment of trustees, the members having voting rights shall elect the trustees, or if the corporation has no members, or no members having voting rights, the governing board shall appoint the trustees. In the absence of a provision fixing the term of office, the term of office of a trustee shall be one year. Where classes of trustees are provided, the terms of office of the several classes need not be uniform.

Each trustee shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

#### **Section 19. Vacancies.**

Unless a different method is provided in the articles of incorporation or the by-laws:

(a) Any vacancy occurring in the governing board by reason of resignation, removal or otherwise, may be filled by the affirmative vote of a majority of the remaining trustees though less than a quorum of the governing board, and

(b) Any trusteeship to be filled by reason of an increase in the number of trustees may be filled by the governing board. A trustee elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed, for the unexpired term of his predecessor in office.

#### **Section 20. Quorum of Trustees.**

A majority of the number of trustees fixed by the by-laws, or in the absence of a by-law fixing the number of trustees, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater or lesser number is required or permitted by the articles of incorporation or by-laws. The act of the majority of the trustees present at a meeting at which a quorum is present shall be the act of the governing board unless the act of a greater number is required by this act, the articles of incorporation or the by-laws.

#### **Section 21. Committees of Trustees.**

If the articles of incorporation or the by-laws so provide, the governing board, by resolution adopted by a majority of the trustees in office, may designate one or more committees, each of which shall consist of two or more trustees, which committee or committees, to the extent provided in such resolution or in the articles of incorporation or the by-laws of the corporation, shall have and may exercise the authority of the governing board in the management of the corporation; provided, however, no such committee shall have the authority of the governing board in reference to amending, altering or repealing the by-laws; electing, appointing or removing any member of such committee or any trustee or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or consolidation with another corporation; authorizing the sale, lease, exchange, mortgage or pledge of all or substantially all of the property or the assets of the corporation; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation on dissolution; or amending, altering or repealing any resolution of the governing board. The designation and appointment of any such committee and the delegation thereto of authority

shall not operate to relieve the governing board, or any individual trustee of any responsibility imposed upon it or him by law.

#### **Section 22. Meetings of Trustees.**

Meetings of the governing board, regular or special, may be held either within or without this state, and upon such notice as the governing board by resolution or the by-laws may prescribe. Attendance of a trustee at any meeting shall constitute a waiver of notice of such meeting except where such trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the governing board need be specified in the notice or waiver of notice of such meeting, unless otherwise provided in the articles of incorporation or the by-laws.

#### **Section 23. Officers.**

The officers of a non-profit corporation shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed by the governing board and shall hold office until their successors are duly elected or appointed and qualified or until they are removed.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the articles of incorporation or the by-laws or as may be determined by resolution of the governing board not inconsistent with the articles of incorporation or the by-laws.

Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights of any of the officers so removed. Election or appointment of an officer shall not of itself create contract rights.

#### **Section 24. Records and Reports.**

All books and records of a non-profit corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

If the articles of incorporation or the by-laws so require, the governing board shall make annually or at such other periods as may be specified in the articles of incorporation or the by-laws, a report to the members showing in reasonable detail the assets and liabilities of the corporation and a general statement of its transactions and condition.

#### **Section 25. Shares of Stock and Dividends Prohibited.**

A non-profit corporation may issue certificates or stock evidencing membership therein or interests in water or other property rights. Except as provided in Section 91, no dividend shall be paid and no part of the income of a non-profit corporation shall be distributed to its members, trustees or officers. A corporation may pay compensation in a reasonable amount to its members, trustees or officers for services

rendered, may confer benefits upon its members in conformity with its purposes, may pay interest on certificates of indebtedness issued by it evidencing capital contributions, and upon dissolution or final liquidation may make distributions to its members as permitted by this act, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income.

#### **Section 26. Loans to Trustees and Officers.**

No loan shall be made by a non-profit corporation to any of its trustees or officers.

#### **Section 27. By-laws.**

A non-profit corporation may, but need not, adopt by-laws.

The power to adopt, amend or repeal by-laws shall be vested in the governing board unless otherwise provided in the articles of incorporation or the by-laws and except that by-laws pertaining to the qualifications, voting rights and property rights of members and the termination or forfeiture of memberships shall not be amended or repealed unless such change receives at least a majority of the votes which members present or represent by proxy at a duly called meeting of members are entitled to cast.

The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

The governing board or members may adopt resolutions for the regulation and management of the affairs of the corporation not inconsistent with law, the articles of incorporation or applicable by-laws, if any.

#### **Section 28. Incorporators.**

One or more persons may act as incorporators of a non-profit corporation by signing, verifying and delivering articles of incorporation in duplicate to the secretary of state.

#### **Section 29. Articles of Incorporation.**

The articles of incorporation of any non-profit corporation organized on or after the effective date of this act shall set forth and the articles of incorporation of any non-profit corporation organized prior to the effective date of this act may set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual.
- (3) The purpose or purposes for which the corporation is organized, including the fact that it is organized as a non-profit corporation.
- (4) Whether or not the corporation has members.
- (5) If the corporation is to issue shares of stock evidencing membership therein of interests in water or other property rights, then the aggregate number of shares which the corporation shall have authority to issue and, if such shares are to be divided into classes, the number of shares of each class, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.
- (6) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation, including any pro-

vision for distribution of assets on dissolution or final liquidation and any provision which under this act is required or permitted to be set forth in the by-laws.

(7) The number of trustees constituting the initial governing board and the names and street addresses of the persons who are to serve as the initial trustees.

(8) The name and street address of each incorporator.

(9) The location and street address of its initial principal office, which office may be changed at any time by the governing board without amendment of the articles of incorporation.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this act.

### **Section 30. Filing Articles of Incorporation.**

Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original.

The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

### **Section 31. Effect of Issuance of Certificate of Incorporation.**

Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this act, except as against the state in a proceeding to cancel or revoke the certificate of incorporation.

### **Section 32. Right to Amend Articles of Incorporation.**

A non-profit corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this act.

### **Section 33. Procedure to Amend Articles of Incorporation.**

Amendments to the articles of incorporation shall be made in the following manner:

(1) Where there are members having voting rights, the governing board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a meeting of the members having voting rights, which may be either an annual or special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds

of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the governing board upon receiving the vote of two-thirds of the trustees in office.

Any number of amendments may be submitted and voted upon at any one meeting.

#### **Section 34. Articles of Amendment.**

The articles of amendment shall be executed in duplicate by the corporation, by any one or more of its principal officers and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the corporation.

(2) The amendment so adopted.

(3) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the governing board at which the amendment was adopted, and a statement of the fact that such amendment received the vote of two-thirds of the trustees in office.

#### **Section 35. Filing of Articles of Amendment.**

Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

#### **Section 36. Effect of Certificate of Amendment.**

Upon issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

**Section 37. Procedure for Merger.**

Any two or more domestic corporations may merge into one of such corporations, pursuant to a plan of merger approved in the manner prescribed by this act.

Each corporation shall adopt a plan of merger setting forth:

(1) The names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(2) The terms and conditions of the proposed merger.

(3) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(4) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

**Section 38. Procedure for Consolidation.**

Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner prescribed by this act.

Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(2) The terms and conditions of the proposed consolidation.

(3) With respect to the new corporation, all of the applicable statements required to be set forth in articles of incorporation for corporations organized under this act.

(4) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

**Section 39. Approval of Merger or Consolidation.**

A plan of merger or consolidation shall be adopted in the following manner:

(1) Where the members of any merging or consolidating corporation have voting rights, the governing board of such corporation shall adopt a resolution approving the proposed plan and directing it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(2) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the governing board of such corporation upon receiving the vote of two-thirds of the trustees in office.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

**Section 40. Articles of Merger or Consolidation.**

Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation, by any one or more of its principal officers, and verified by one of the officers of each corporation signing such articles, and shall set forth:

(a) The plan of merger or the plan of consolidation.

(b) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (1) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(c) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the governing board at which the plan was adopted and a statement of the fact that such plan received the vote of two-thirds of the trustees in office.

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this act prescribed:

(a) Endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original.

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

**Section 41. Effective Date of Merger or Consolidation.**

Upon the issuance of the certificate of merger, or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

**Section 42. Effect of Merger or Consolidation.**

When such merger or consolidation has been effected:

(1) The several corporation parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this act.



(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other cases in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed: and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall henceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation, and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this act shall be deemed to be the articles of incorporation of the new corporation.

#### **Section 43. Merger or Consolidation of Domestic or Foreign Corporations.**

One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation, as the case may be is to be governed by the laws of any state other than this state, it shall comply with the provisions of this act with respect to foreign corporations if it is to transact business in this state and, in every case, it shall file with the secretary of state (a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation, (b) an irrevocable appointment of the secretary of the state as its agent to accept service of process in any such proceeding, and (c) a post office address to which the secretary of state may mail a copy of any service of process, notice or demand against the corporation that may be served on the secretary of state.

(3) The effect of such merger or consolidation shall be the same

as in the case of a merger or consolidation of domestic corporations if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, except insofar as the laws of such other state provide otherwise.

#### **Section 44. Sale or Mortgage of Assets.**

A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a non-profit corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) Where there are members having voting rights and the articles of incorporation do not expressly provide that the governing board may sell, lease, exchange, mortgage, pledge or otherwise dispose of the property and assets of the corporation, the governing board shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this act for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the governing board to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members or no members having voting rights or where there are members having voting rights and the articles of incorporation expressly provide that the governing board may sell, lease, exchange, mortgage, pledge or otherwise dispose of the property and assets of the corporation, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of two-thirds of the trustees in office.

#### **Section 45. Voluntary Dissolution.**

A non-profit corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the governing board shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice

stating that the purpose, or one of the purposes of such meeting is to consider the advisability of dissolving the corporation, shall be given in the manner provided in this act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the governing board upon the adoption of a resolution to dissolve by the vote of two-thirds of the trustees in office.

Upon the adoption of such resolution by the members, or by the governing board where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation and to the secretary of state, and shall proceed to collect its assets and apply and distribute them as provided in this act.

#### **Section 46. Distribution of Assets.**

The assets of a non-profit corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or other purposes for which a corporation may be formed hereunder, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this act;

(4) To the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others, other assets, if any, shall be distributed in accordance with such provisions.

(5) Any remaining assets may be distributed to such person, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this act.

#### **Section 47. Plan of Distribution.**

A plan providing for the distribution of assets, not inconsistent with the provisions of this act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the

purpose of authorizing any transfer or conveyance of assets for which this act requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, the governing board shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting and may be at the meeting at which the resolution to dissolve is considered and adopted. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the governing board upon receiving the vote of two-thirds of the trustees in office.

#### **Section 48. Revocation of Voluntary Dissolution Proceedings.**

A non-profit corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) Where there are members having voting rights, the governing board shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the governing board upon receiving the vote of two-thirds of the trustees in office.

Upon adoption of such resolution by the members, or by the governing board where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs.

#### **Section 49. Articles of Dissolution.**

If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed and distributed in accordance with the provisions of this act, articles of dissolution shall be executed in duplicate by the corporation by any one or more of its principal offi-

cers, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the governing board at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of two-thirds of the trustees in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this act.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

#### **Section 50. Filing of Articles of Dissolution.**

Duplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this act prescribed and he has received a statement from the tax commission that the corporation is exempt from taxation or that it has paid all taxes, if any, due the State of Utah:

(1) Endorse on each such duplicate originals the word "filed" and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, or trustees and officers as provided in this act.

#### **Section 51. Involuntary Dissolution.**

A non-profit corporation may be dissolved involuntarily by a decree of the district court of Salt Lake County (which court is hereby declared to have venue thereof) in an action filed by the attorney general when it is established that:

(1) The corporation procured its articles of incorporation through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(3) The corporation has fraudulently solicited money or fraudulently used the money solicited.

Summons and other process shall issue and be served as in other civil actions.

#### **Section 52. Court Liquidation.**

Courts of equity shall have full power to liquidate the assets and affairs of a non-profit corporation:

(1) In an action by a member or trustee when it is made to appear:

(a) That the governing board is deadlocked in the management of corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock, or that there are no members having voting rights; or

(b) That the acts of the governing board or those in control of the corporation are illegal, oppressive or fraudulent; or

(c) That the corporate assets are being misapplied or wasted; or

(d) That the corporation is unable to carry out its purposes.

(2) In action by a creditor:

(a) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(b) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(3) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(4) When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under subsections (1), (2), or (3) of this section shall be brought in the county in which the principal office of the corporation is situated.

It shall not be necessary to make trustees or members parties to any such action or proceedings unless relief is sought against them personally.

In proceedings under subsection (1) of this section, the court may in its discretion award a reasonable attorney's fee and the costs of bringing such an action to the member or members or trustee or trustees bringing the action.

#### **Section 53. Procedure in Court Liquidation.**

In proceedings to liquidate the assets and affairs of a non-profit corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever

situated, and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon conditions requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or other purposes for which a corporation may be formed hereunder, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporations as the court may direct;

(4) To the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others, other assets, if any, shall be distributed in accordance with such provisions.

(5) Any remaining assets may be distributed to such person, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this act, or where no plan of distribution has been adopted, as the court may direct.

The court shall have power to allow, from time to time, as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceedings, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

**Section 54. Qualification of Receivers.**

A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

**Section 55. Filing of Claims in Liquidation Proceedings.**

In proceedings of liquidation the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of the court, from participating in the distribution of the assets of the corporation.

**Section 56. Discontinuance of Liquidation.**

The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to re-deliver to the corporation all its remaining property and assets.

**Section 57. Decree of Dissolution.**

In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of the act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and payment, the obligations and all property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation.

**Section 58. Filing of Decree of Dissolution.**

In case the court shall enter a decree dissolving a corporation it, shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

**Section 59. Unclaimed Assets.**

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the state treasurer to be held and disposed of by him in accordance with the provisions of the Uniform Disposition of Unclaimed Property Act.



**Section 60. Survival of Remedy After Dissolution.**

The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, trustees, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceedings thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, trustees and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

**Section 61. Continuance of Corporate Existence.**

Notwithstanding the dissolution of a non-profit corporation either: (1) by the issuance of a certificate of dissolution by the secretary of state, or (2) by a decree of court, or (3) by expiration of its period of duration, the corporate existence of such corporation shall nevertheless continue for the purpose of winding up its affairs in respect to any property and assets which have not been distributed or otherwise disposed of prior to such dissolution, and to effect such purpose such corporation may sell or otherwise dispose of such property and assets, sue and be sued, contract, and exercise all other incidental and necessary powers.

**Section 62. Admission of Foreign Corporation.**

No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority to do so from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this act to transact in this state any business which a corporation organized under this act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or county under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this act contained shall be construed to authorize this state to regulate the organization of the internal affairs of such corporation.

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this act, by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its governing board or members or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Creating evidences of debt, mortgages or liens on real or personal property.

(5) Securing or collecting debts due to it or enforcing any rights in property securing the same.

(6) Conducting an isolated transaction not in the course of a number of repeated transactions of like nature, including an isolated transaction involving the acquisition or disposition of real or personal property within the state.

### **Section 63. Powers of Foreign Corporation.**

A foreign corporation which shall have received a certificate of authority under this act shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued; and, except as in this act otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

### **Section 64. Corporate Name of Foreign Corporation.**

A certificate of authority shall not be issued to a foreign corporation if the corporate name of such corporation

(1) Contains a word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(2) Is the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit existing under the laws of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business in this state, or a corporate name reserved or registered as permitted by the laws of this state, or any trade-mark or service mark registered in this state, unless there has been filed with the secretary of state the written consent to such similarly executed by such corporation or by the holder of such reserved or registered corporate name, trade-mark or service mark; or

(3) Is not transliterated into letters of the English alphabet, if it is not in English.

### **Section 65. Change of Name by Foreign Corporation.**

Whenever a foreign corporation is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state.

### **Section 66. Application for Certificate of Authority.**

A foreign corporation, in order to procure a certificate of authority

to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefore to the secretary of state, which application shall set forth:

(1) The name of the corporation and the state or county under the laws of which it is incorporated.

(2) The date of incorporation and the period of duration of the corporation.

(3) The address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(4) The address, including street and number, if any, of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address.

(5) A brief statement of the purpose or purposes of the corporation which it proposes to pursue in transacting its business in this state.

(6) The names and respective addresses, including street and number, if any, of the members of the governing board of the corporation.

(7) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by any one or more of its principal officers, and verified by one of the officers signing such application.

#### **Section 67. Filing of Application for Certificate of Authority.**

Duplicate originals of the application of the foreign corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or county under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such documents the word "filed", and the month, day and year of the filing thereof.

(2) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

#### **Section 68. Effect of Certificate of Authority.**

Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however,

to the right of this state to suspend or to revoke such authority as provided in this act.

**Section 69. Registered Office and Registered Agent.**

Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office in this state.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business in this state, having a business office identical with such registered office.

**Section 70. Change of Registered Office or Registered Agent.**

A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(1) The name of the corporation.

(2) The address of its then registered office.

(3) If the address of its registered office be changed, the address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent be changed, the name of its successor registered agent.

(6) That such change was authorized by resolution duly adopted by its governing board.

Such a statement shall be executed and verified by the corporation by any one or more of its principal officers and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this act, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be shall become effective.

Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state who shall forthwith mail a copy thereof to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated as shown by the records of the secretary of state pertaining to the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state or upon the appointment of a successor agent becoming effective, whichever first occurs.

**Section 71. Service of Process on Foreign Corporation.**

The registered agent so appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office and an affidavit of such fact and of the efforts made to find the registered agent is filed with the secretary of state, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated as such address appears in the records of the secretary of state pertaining to the corporation. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

#### **Section 72. Amendment to Articles of Incorporation of Foreign Corporation.**

Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in transacting its business in this state, nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority.

#### **Section 73. Merger of Foreign Corporation.**

Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such a statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed

thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

#### **Section 74. Amended Certificate of Authority.**

A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

#### **Section 75. Withdrawal of Foreign Corporation.**

A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not transacting business in this state.

(3) That the corporation surrenders its authority to transact business in this state.

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state.

(5) A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by any one or more of its principal officers, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

#### **Section 76. Filing Application for Withdrawal.**

Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this act, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

#### **Section 77. Revocation of Certificate of Authority.**

The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

- (1) The corporation has failed to file its annual report within the time required by this act, or has failed to pay any fees or penalties prescribed by this act when they have become due and payable; or
- (2) The corporation has failed to appoint and maintain a registered agent in this state as required by this act; or
- (3) The corporation has failed, after change of its registered agent, to file in the office of the secretary of state a statement of such change as required by this act; or
- (4) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this act; or
- (5) The certificate of authority of the corporation was procured through fraud practiced upon the state; or
- (6) The corporation has continued to exceed or abuse the authority conferred upon it by this act; or
- (7) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this act.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (a) he shall have given the corporation not less than sixty days notice thereof by registered or certified mail addressed to its registered office in this state and to its principal office in the state or country under the laws of which it is incorporated, as such addresses appear in the records of the secretary of state pertaining to the corporation, and (b) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent, or file such articles of merger, or correct such misrepresentation.

#### **Section 78. Revocation of Certificate of Authority.**

Upon revoking any such certificate of authority, the secretary of state shall:

- (1) Issue a certificate of revocation in triplicate.
- (2) File one of such certificates in his office.
- (3) Mail to such corporation at its registered office in this state and to the principal office of such corporation in the state or country under the laws of which it is incorporated, as shown by the records of the secretary of state pertaining to such corporation, a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease.

**Section 79. Transacting Business Without Certificate of Authority.**

No foreign corporation which is transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of the state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

**Section 80. Annual Report.**

Each domestic non-profit corporation and each foreign non-profit corporation authorized to transact business in this state, shall file, within the time prescribed by this act, an annual report setting forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) In the case of a domestic corporation, the address of its principal office in this state or other mailing address where notices may be sent by the secretary of state; in the case of a foreign corporation, the address of its registered office in this state, the name of its registered agent in this state and the address of its principal office or other mailing address in the state or country under the laws of which it is incorporated.

(3) The names and respective addresses, including street and number, if any, of the members of the governing board of the corporation.

Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by one of its principal officers and verified by the officer executing the report, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and verified by such receiver or trustee.

**Section 81. Annual Report When Due.**

The annual report of a domestic or foreign non-profit corporation shall be delivered to the secretary of state between the first day of January and the first day of April of each year, except that the first annual report of such a domestic or foreign corporation shall be filed between the first day of January and the first day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. If the secretary of state finds that such report conforms to the requirements of this act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to



the corporation for any necessary corrections, in which event the penalties for failure to file such report within the time provided in this section shall not apply if such report is corrected to conform to the requirement of this act and returned to the secretary of state in sufficient time to be filed prior to the first day of June of the year in which it is due.

### **Section 82. Failure to File Annual Report of Domestic Corporation.**

If the annual report of a domestic non-profit corporation is not filed within the time provided by this act, the secretary of state shall mail a notice of delinquency to each such corporation other than corporations whose charters have been suspended for failure to file a previous annual report. The notice of delinquency shall set forth that the annual report of the corporation has not been filed and that the charter of the corporation will be suspended unless a penalty of \$1 is paid and the annual report of the corporation is filed on or before the suspension date (which date shall be the last day of December following the expiration of not less than 90 days after mailing of the notice of delinquency), the charter of the corporation shall be suspended as of such date and the secretary of state shall promptly mail a notice of suspension to the corporation.

The notice of suspension shall set forth:

- (1) That an annual report of the corporation has not been filed;
- (2) That by reason thereof, the charter of the corporation was suspended;
- (3) The suspension date;
- (4) That the charter may be reinstated upon filing an annual report and paying a penalty of \$10 on or before the forfeiture date specified in the notice, which date shall be four years after the date of suspension;
- (5) That unless so reinstated, the charter of the corporation will be forfeited and the corporation dissolved.

An annual report form shall be enclosed with the notice of suspension.

On or before the first day of July each year, the secretary of state shall mail to each suspended corporation whose charter will be forfeited on the last day of December of that year, a second notice of suspension and shall also publish in one or more newspapers of general circulation in the state at least once each week during two successive weeks, a list of the names of each corporation whose charter will be so forfeited. If for any reason the second notice of suspension is not so mailed to a suspended corporation or the name of a suspended corporation is not so published, the forfeiture date of that corporation shall be extended for one year. Unless an annual report of a suspended corporation is filed and the penalty of \$10 paid on or before the forfeiture date, the charter of the corporation shall be automatically forfeited and the secretary of state shall mail to the corporation a certificate of dissolution to which he shall attach a copy of the notice of suspension. The corporation shall be dissolved as of the forfeiture date with like effect as in the case of voluntary dissolution.

All notices and the certificate of dissolution to be mailed pursuant to this section shall be deemed mailed properly if deposited in the United States mail, postage prepaid, addressed to the corporation at its prin-

cipal office or other mailing address appearing on the records of the secretary of state pertaining to the corporation. The notice of delinquency and certificate of dissolution may be mailed by regular mail. The notices of suspension shall be mailed by registered or certified mail.

For good cause shown, the secretary of state may waive or reduce any monetary penalty prescribed by this section.

### **Section 83. Fees for Filing Documents and Issuing Certificates.**

The secretary of state shall charge and collect for :

- (1) Filing articles of incorporation and issuing a certificate of incorporation, five dollars.
- (2) Filing articles of amendment and issuing a certificate of amendment, five dollars.
- (3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, five dollars.
- (4) Filing an application to reserve a corporate name, five dollars.
- (5) Filing a notice of transfer of a reserved corporate name, five dollars.
- (6) Filing articles of dissolution and issuing a certificate of dissolution, one dollar.
- (7) Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, ten dollars.
- (8) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, five dollars.
- (9) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, five dollars.
- (10) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, five dollars.
- (11) Filing a statement of change of address of registered office or change of registered agent, or both, one dollar.
- (12) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, one dollar.
- (13) Filing an annual report of a domestic or foreign corporation, no charge.
- (14) Filing any other statement or report of a domestic or foreign corporation, one dollar.

### **Section 84. Miscellaneous Charges.**

The secretary of state shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, thirty-five cents per page and one dollar for the certificate and affixing the seal thereto.
- (2) At the time of any service of process on him as resident agent of a corporation, five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

**Section 85. Powers of Secretary of State.**

The secretary of state shall have the power and authority reasonably necessary to enable him to administer this act efficiently and to perform the duties herein imposed upon him.

**Section 86. Appeal From Secretary of State.**

If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this act to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the district court of the county in which the principal office of such domestic corporation or the registered office of such foreign corporation, is or is proposed to be situated by filing with the clerk of such court a petition setting forth a copy of the articles or other documents sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of this act, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by a district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

**Section 87. Certificate and Certified Copies to Be Received in Evidence.**

All certificates issued by the secretary of state in accordance with the provisions of this act, and all copies of documents filed in his office in accordance with the provisions of this act when certified by him, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state, as to the existence or non-existence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

**Section 88. Forms to Be Furnished by Secretary of State.**

The use of any forms required to be filed in the office of the secre-

tary of state shall not be mandatory unless otherwise specifically prescribed in this act.

**Section 89. Unauthorized Assumption of Corporate Powers.**

All persons who assume to act as a non-profit corporation without authority to do so shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

**Section 90. Penalties Imposed Upon Officers and Trustees.**

Each trustee of any officer of a corporation, domestic or foreign, who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such trustee or officer to be false in any material respect, shall be guilty of a misdemeanor.

**Section 91. Use of "Cooperative" in Corporate Name.**

A cooperative association which is not subject to the insurance or credit union laws of this state may be incorporated under this act and may use the word "cooperative" as a part of its corporate or business name if its articles of incorporation provide:

(1) That no member shall have more than one vote regardless of the number or amount of stock or membership capital owned by him unless voting is based in whole or in part on the volume of patronage of the member with the cooperative association, and

(2) That savings in excess of dividends and additions to reserves and surplus shall be distributed or allocated to members or patrons on the basis of patronage.

Any such cooperative association shall have all the rights and be subject to the limitations provided in Section 3-1-11, Utah Code Annotated 1953, and may pay dividends on its stock, if it has stock, subject to the limitations of such section. The articles of incorporation or the by-laws of any such cooperative association may provide for the establishment and alteration of voting districts, the election of delegates to represent such districts and the members thereof, the establishment and alteration of director districts and the election of directors to represent such districts either by the members thereof or by delegates elected by the members.

A corporation organized under the Uniform Agricultural Cooperative Association Act may convert itself into a cooperative association subject to this act by adopting appropriate amendments to its articles of incorporation by which it elects to become subject to this act, together with other changes in its articles required by this act and any other changes permitted by this act. Such amendments shall be adopted and filed in the manner provided by the law when applicable to the corporation.

**Section 92. Existing Corporations Continued.**

Non-profit corporations, including corporations formerly designated as not for pecuniary profit, which are organized and existing under the laws of this state at the time this act takes effect shall continue in existence with all the rights and privileges applicable to non-profit corporations organized under this act, and from the time this act takes effect, such corporations shall have all the rights and privileges and

shall be subject to all the remedies, restrictions, liabilities and duties prescribed herein except as otherwise specifically provided in this act.

Foreign non-profit corporations which qualified to do business in this state under the provisions of Chapter 8 of Title 16, Utah Code Annotated 1963, which provisions were repealed by Chapter 28, Laws of Utah 1961, shall be authorized to transact business in this state subject to all of the limitations, restrictions, liabilities and duties prescribed herein.

On or before April 1, 1964 and annually thereafter as provided in Section 81, every existing domestic corporation and foreign corporation qualified to do business in this state at the time this act takes effect, shall file an annual report with the secretary of state setting forth the information prescribed by Section 80. The designation and address of the registered office and the registered agent of a foreign corporation contained in the first annual report of such corporation shall be in lieu of designating such office and agent in the application for certificate of authority of such foreign corporation and such designation shall continue until changed as provided in Section 70.

#### **Section 93. Sections Repealed.**

Section 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5, 16-6-6, 16-6-7, 16-6-8, 16-6-9, 16-6-10, 16-6-11, 16-6-12, and 16-6-16, Utah Code Annotated 1953, Section 16-6-17, Utah Code Annotated 1953, as enacted by Chapter 24, Laws of Utah 1957, and 16-10-142, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, are hereby repealed.

#### **Section 94. Effect of Repeal of Prior Laws.**

The repeal of any prior law shall not affect any right accrued or established, or any liability or penalty incurred or any action or proceeding begun under the provisions of such law prior to the repeal thereof.

#### **Section 95. Prior Laws Not Repealed.**

Sections 16-6-13, 16-6-13.1, 16-6-13.2, 16-6-13.3, 16-6-14, and 16-6-15, Utah Code Annotated 1953, pertaining to certain types of non-profit corporations, shall in no way be deemed repealed in whole or in part by the provisions of this act and all references in said sections to corporations "incorporating", "incorporated" or "to be incorporated" under or pursuant to "this chapter" shall be deemed to include such types of non-profit corporations organized under this act or otherwise governed by the provisions of this act.

#### **Section 96. Effect of Invalidity of Part of This Act.**

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this act so adjudged to be invalid or unconstitutional.

#### **Section 97. Effective Date.**

This act shall take effect upon July 1, 1963.

Approved March 7, 1963.

## CHAPTER 18

S. B. No. 226

(Passed March 14, 1963. In effect May 14, 1963)

## FEES FOR CORPORATIONS SOLE

**An Act Adding a New Section to Be Known as Section 16-7-11, Utah Code Annotated 1953, Fixing Fees to Be Charged by the Secretary of State Relating to Corporations Sole.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Enacted.**

Section 16-7-11 is enacted to read:

**Section 16-7-11. Fees for Corporation Sole.**

The Secretary of State shall charge and collect for:

- (1) Filing articles of incorporation of a corporation sole and issuing a certificate of incorporation, \$1.00.
- (2) Filing articles of amendment and issuing a certificate of amendment, \$1.00.
- (3) Issuing each additional certificate of incorporation or amendment, \$1.00.
- (4) Filing certificate of authorized agent and issuing his certificate thereof, \$1.00.
- (5) Filing revocation of authority, \$1.00.
- (6) For furnishing a certified copy of any document, instrument or paper relating to a corporation sole and affixing his seal, \$1.00.

Approved March 19, 1963.

## CHAPTER 19

S. B. No. 44

(Passed March 13, 1963. In effect May 14, 1963)

## AMENDMENTS TO CORPORATION CODE

**An Act Amending Sections 16-10-4, 16-10-28, 16-10-37, 16-10-57, 16-10-60, 16-10-61, 16-10-93, 16-10-102, 16-10-120, 16-10-135 and 16-10-143, Utah Code Annotated 1953, as Enacted by Chapter 28, Laws of Utah 1961 Relating to the Utah Business Corporation Act; Providing for Amendments for the Purpose of Correcting Errors Appearing in the Utah Business Corporation Act as Enacted in 1961, Such Corrections Being in Words, Punctuation and Adding Certain Omitted Matter and Omitting Certain Matter.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 16-10-4, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

**16-10-4. General Powers.**

Each corporation shall have power:

- (a) To have perpetual succession by its corporate name unless

a limited period of duration is stated in its articles of incorporation.

(b) To sue and be sued, complain and defend, in its corporate name.

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any manner reproduced.

(d) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(f) To lend money to, and otherwise assist, its employees, officers and directors.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(h) To make contracts and guarantees, and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(j) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this act in any state, territory, district, or possession of the United States, or in any foreign country.

(k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(l) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(m) To make donations for the public welfare or for charitable, scientific, religious or educational purposes; provided, however, that nothing in this section shall be construed as directly or indirectly affecting the restrictions on corporate contributions imposed by Section 20-14-21.

(n) In time of war to transact any lawful business in aid of the United States in the prosecution of the war.

(o) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged

in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; and to make any other indemnification that shall be authorized by the articles of incorporation or by any by-laws or resolution adopted by the shareholders after notice.

(p) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees.

(q) To cease its corporate activities and surrender its corporate franchise.

(r) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

### **Section 2. Section Amended.**

Section 16-10-28, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

#### **16-10-28. Closing of Transfer Books and Fixing Record Data.**

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the by-laws, or in the absence of an applicable by-law the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days, and in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholder, or shareholders entitled to receive payment of a dividend, the date in which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

### **Section 3. Section Amended.**

Section 16-10-37, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

#### **16-10-37. Removal of Directors.**

At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. One or more directors or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to at an election of directors. In the case of a corporation having



cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes of sufficient number of shares are cast against the removal which, if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part, would be sufficient to elect him.

Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect of the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

#### **Section 4. Section Amended.**

Section 16-10-57, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

#### **16-10-57. Articles of Amendment.**

The articles of amendment shall be executed in duplicate by the corporation by its president or vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

- (a) The name of the corporation.
- (b) The amendment so adopted.
- (c) The date of the adoption of the amendment by the shareholders.
- (d) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon, as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.
- (e) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively.
- (f) If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.
- (g) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

#### **Section 5. Section Amended.**

Section 16-10-60, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

#### **16-10-60. Revision of Articles of Incorporation by Amendment—Filing Articles of Amendment—Issuance and Effect of Issuance of Certificates of Revision.**

An amendment to the articles of incorporation shall be considered a revision of the articles of incorporation and shall supercede the existing articles of incorporation as theretofore amended (1) if the amendment is set forth in its entirety in the notice to shareholders entitled

to vote on such amendment and (2) if the amendment contains the following provisions:

- (a) The name of the corporation.
- (b) The period of its duration.
- (c) The purpose or purposes which the corporation is authorized to pursue.
- (d) The aggregate number of shares which the corporation has authority to issue; if such shares consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are without par value.
- (e) If the shares are divided into classes, the designation of each class and a statement of the preference, limitations and relative rights in respect of the shares of each class.
- (f) If the shares of any preferred or special class are issuable in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same have been fixed, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.
- (g) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.
- (h) Any provisions, not inconsistent with law, for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this act is required or permitted to be set forth in the by-laws.
- (i) A statement that the revised articles of incorporation supersede the original articles of incorporation and all amendments thereto.

If the secretary of state finds that an amendment revises the articles of incorporation in accordance with this section and otherwise conforms to law, he shall, when all fees have been paid as in this act prescribed:

- (i) Endorse on each of the duplicate originals of the articles of amendment the word "filed", and the month, day and year of the filing thereof.
- (ii) File one of such duplicate originals in his office.
- (iii) Issue a certificate of revision to which he shall affix the other duplicate original.

The certificate of revision, together with the duplicate original of the revision of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the issuance of the certificate of revision, the revised articles of incorporation shall become effective and shall supersede the original or previously revised articles of incorporation and all amendments thereto. No change in the original or previously revised articles of incorporation as theretofore amended made as a result of the adoption of revised articles of incorporation shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders, and, in the event the corporate name shall

be changed by such revised articles of incorporation, no suit brought by or against such corporation under its former name shall abate for that reason.

#### **Section 6. Section Amended.**

Section 16-10-61, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah, 1961, is amended to read:

#### **16-10-61. Restated Articles of Incorporation—Filing—Issuance and Effect of Issuance of Certificates of Restatement.**

A domestic corporation may at any time restate its articles of incorporation as theretofore amended in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation and stating that the same correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended.

(b) Upon the adoption of such a resolution, the restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or assistant secretary.

Duplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that such restated articles of incorporation set forth without change the articles of incorporation as theretofore amended, he shall, when all fees have been paid as in this act prescribed:

(a) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Issue a certificate of restatement to which he shall affix the other duplicate original.

The certificate of restatement, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the issuance of a certificate of restatement, the restated articles of incorporation shall become effective and may be used for all purposes as the equivalent of the articles of incorporation and all amendments thereto.

#### **Section 7. Section Amended.**

Section 16-10-93, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

#### **16-10-93. Procedure in Liquidation of Corporation by Court.**

In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

After such hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating

receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

#### **Section 8. Section Amended.**

Section 16-10-102, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

#### **16-10-102. Admission of Foreign Corporation—Activities Not Considered Transacting Business in State.**

No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this act to transact in this state any business which a corporation organized under this act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this act contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purpose of this act, by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

- (b) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.
- (c) Maintaining bank accounts.
- (d) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.
- (e) Effect sales through independent contractors.
- (f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.
- (g) Creating evidences of debt, mortgages or liens on real or personal property.
- (h) Securing or collecting debts or enforcing any rights in property securing the same.
- (i) Transacting any business in interstate commerce.
- (j) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.
- (k) Acquiring, in transactions outside Utah or in interstate commerce, of conditional sale contracts or of debts secured by mortgages or liens on real personal property in Utah, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights in property provided for in said conditional sale contracts or securing said debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by said conditional sales contracts or the interest of the mortgagee or holder of the lien in said security, or any combination of such transactions.

#### **Section 9. Section Amended.**

Section 16-10-120, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

#### **16-10-120. Transacting Business Without Certificate of Authority.**

No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any act of, suit or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and taxes

which would have been imposed by the laws of this state upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this act and thereafter filed all reports required by this act, plus all penalties imposed by the laws of this state for failure to pay such fees and taxes. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

**Section 10. Section Amended.**

Section 16-10-135, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

**16-10-135. Filing Forms.**

The use of any form required to be filed in the office of the secretary of state, unless otherwise specifically prescribed in this act, shall not be mandatory.

**Section 11. Section Amended.**

Section 16-10-143, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1961, is amended to read:

**16-10-143. Effect of Repeal on Prior Acts.**

The repeal of a prior law by this act shall not affect any right accrued or established, or any liability or penalty incurred, or any action or proceeding begun under the provisions of such law prior to the repeal thereof. Without limiting the generality of the foregoing, actions pending when this act takes effect under Chapter 43 of Title 78, relating to the voluntary withdrawal of foreign corporation, may be continued to final decree under such chapter and title; actions so pending under Chapter 42 of Title 78, relating to the voluntary dissolution of domestic corporations, may be continued to final decree under such chapter and title and mergers or consolidations under Chapter 5 of Title 16, which have been approved by the shareholders of one or more of the constituent corporations when this act takes effect, may be completed under such chapter and title.

Approved March 18, 1963.

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**CHAPTER 20**

H. B. No. 197

(Passed March 14, 1963. In effect May 14, 1963)

**PROFESSIONAL CORPORATION ACT**

**An Act Relating to the Incorporation of Persons Rendering Professional Services: Defining What Persons May So Incorporate; Providing for the Method by Which Such Persons Can Incorporate a Professional Corporation; Prescribing the Manner in Which Such Corporations May Operate; Providing for Applicability of the Utah Business Corporation Act and Requiring Annual Certificates for Continuation of Any Professional Corporation.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Professional Corporation Act.**

This act shall be known and may be cited as the "Professional Corporation Act".

**Section 2. Definitions.**

As used in this act:

(1) "Professional Corporation" means a corporation organized under this act.

(2) "Professional Service" means the personal service rendered by:

(a) A physician, surgeon or doctor of medicine holding a license under Chapter 12 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of medicine.

(b) A doctor of dentistry holding a license under Chapter 7 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of dentistry.

(c) An osteopathic physician or surgeon holding a license under Chapter 12 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of osteopathy.

(d) A chiropractor holding a license under Chapter 12 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of chiropractic.

(e) A chiropodist-podiatrist holding a license under Chapter 5 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of chiropody.

(f) An optometrist holding a license under Chapter 16 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of optometry.

(g) A veterinarian holding a license under Chapter 21 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of veterinary medicine.

(h) An architect holding a license under Chapter 3 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of architecture.

(i) A public accountant holding a license under Chapter 2 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of public accounting.

(j) A naturopath holding a license under Chapter 12 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of naturopathy.

(k) A pharmacist holding a license under Chapter 17 of Title 58, Utah Code Annotated 1953, and any subsequent laws regulating the practice of pharmacy.

(l) An attorney granted the authority to practice law by the Supreme Court of the State of Utah, as provided in Chapter 51 of Title 78, Utah Code Annotated 1953.

(3) "Regulating board" means the board which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render. The definitions of the Utah Business Corporation Act shall apply to this act unless the context clearly indicates that a different meaning is intended.

**Section 3. Purpose of Act.**

This act shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the corporate form for the business aspects of their practices while preserving the established professional aspects of the personal relationship between the professional person and those he serves.

**Section 4. Requirements for Incorporation.**

Three or more individuals, each of whom is licensed to render a professional service, may incorporate a professional corporation by filing articles of incorporation with the secretary of state. Such articles of incorporation shall meet the requirements of the Utah Business Corporation Act and in addition thereto contain the following:

(1) The profession to be practiced through the professional corporation.

(2) The names and residence address of all of the original shareholders, directors and officers of the professional corporation.

**Section 5. Application of Act.**

The Utah Business Corporation Act shall be applicable to professional corporations, and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other corporations, except where inconsistent with this act. This act shall take precedence in the event of any conflict with provisions of the Utah Business Corporation Act or other laws.

**Section 6. Business of Professional Corporation.**

A professional corporation may be organized pursuant to the provisions of this act only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other than rendering the professional service which it was organized to render and services ancillary thereto; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds and any other type of investments.

**Section 7. Issuance of Shares.**

A professional corporation may issue the shares of its capital stock only to persons who are duly licensed to render the same specific professional services as those for which the corporation was organized. A shareholder may voluntarily transfer his shares in a professional corporation only to a person who is duly licensed to render the same specific professional services as those for which the corporation was organized. Any shares issued in violation of this section are void.

**Section 8. Qualification of Officer, Director or Shareholder.**

No person may be an officer, director, or shareholder of a professional corporation who is not an individual duly licensed to render the same specific professional services as those for which the corporation was organized; provided, however, a non-licensed person may serve as secretary or treasurer.



**Section 9. Services by Licensed Employee.**

A professional corporation may render professional services only through its officers, employees and agents who are duly licensed to render such professional services.

**Section 10. Liability.**

This act does no alter any law applicable to the relationship between a person rendering professional services and a person receiving such services, including liability arising out of such professional services.

**Section 11. Power of Regulating Boards.**

Nothing in this act shall restrict or limit in any manner the authority and duty of the regulating board for the licensing of individual persons rendering professional services or the practice of the profession which is within the jurisdiction of such regulating board, notwithstanding that such person is an officer, director, shareholder or employee of a professional corporation and rendering such professional services or engaging in the practice of such profession through such professional corporation.

**Section 12. Limitation on Powers.**

No professional corporation may do any act which is prohibited to be done by individual persons licensed to practice the profession which the professional corporation is organized to render.

**Section 13. Redemption—Purchase of Shares.**

The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the death or disqualification of such shareholder, or the same may be provided in the by-laws or by private agreement. In the absence of such a provision in the articles of incorporation, the by-laws, or by private agreement, the professional corporation shall purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in such corporation within 90 days after the death of the shareholder or disqualification of the shareholder, as the case may be. The price for such shares shall be their reasonable fair value as of the date of death or disqualification of the shareholder. If the corporation shall fail to purchase said shares by the end of said 90 days, then the executor or administrator or other personal representative of a deceased shareholder or any disqualified shareholder may bring action in the district court of the county in which the principal office or place of practice of the professional corporation is located for the enforcement of this provision. The court shall have power to award the plaintiff the reasonable fair value of his shares, or within its jurisdiction, may order the liquidation of the corporation. Further, if the plaintiff is successful in such action, he shall be entitled to recover a reasonable attorney's fee and costs. The professional corporation shall repurchase such shares without regard to restrictions upon the repurchase of shares provided by the Utah Business Corporation Act.

**Section 14. Filing of Certificates—Fees.**

Between the first day of January and the last day of February of each year, each professional corporation shall file with the secretary

of state a certificate giving the name and residence addresses of all shareholders of such professional corporation as of the 31st day of December next preceding, and certifying that all of such shareholders are duly licensed to render the same specific professional services as those for which the corporation was organized. This certificate is made on such form as shall be prescribed and furnished by the secretary of state, shall be signed by the president or vice president and attested by the secretary or assistant secretary of the professional corporation, and acknowledged and sworn to before a notary public by the persons executing the certificate. A filing fee of \$10 shall be paid to the secretary of state with the filing of each such certificate, and no other fees shall be charged therefor. A duplicate original copy of such annual certificate shall be filed at the same time with the regulatory board which licenses the shareholders described in the certificates. No filing fee shall be charged by the regulatory board for such filing.

**Section 15. Act Not Exclusive.**

This act shall not preclude incorporation by professional persons under the Utah Business Corporation Act, where such persons would be permitted to organize a corporation and perform professional services by means of such corporation in the absence of this act. This act shall not apply to any corporation organized by such persons prior to the passage of this act, but any such persons or any such corporation may bring themselves and such corporation within the provisions of this act by amending the articles of incorporation in such a manner as to be consistent with all of the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

**Section 16. Savings Clause.**

If any provision of this act or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

Approved March 19, 1963.

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## COUNTIES

### CHAPTER 21

H. B. No. 157

(Passed March 14, 1963. In effect May 14, 1963)

#### CAPITAL IMPROVEMENTS

**An Act Amending Section 17-4-7, Utah Code Annotated 1953, as Amended by Chapter 25, Laws of Utah 1959, Relating to a Reserve Fund for Capital Improvements and Repealing Section 17-4-8, Utah Code Annotated 1953, as Amended by Chapter 25, Laws of Utah 1959.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 17-4-7, Utah Code Annotated 1953, as amended by Chapter 25, Laws of Utah 1959, is amended to read:

**17-4-7. Reserve Fund for Major Capital Improvements—Estimate of Amount Required—Tax Levy—Accumulations Year to Year—Restriction.**

The governing body of each such county may include in the annual budget or estimate of amounts required to meet the public expenses of such subdivision for the ensuing year such sum as it may deem necessary for the uses and purposes of the fund. Such sum may be included in the annual tax levy of the political subdivision. The monies in said fund shall be allowed to accumulate from year to year until the governing body of the political subdivision shall determine to spend any money in the fund for the purpose specified. Any monies in said fund at the end of the fiscal year shall remain intact as surplus available for future use, and shall not be transferred to any other fund or used for any other purpose.

**Section 2. Section Repealed.**

Section 17-4-8, Utah Code Annotated 1953, as amended by Chapter 25, Laws of Utah 1959, is hereby repealed.

Approved March 19, 1963.

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**CHAPTER 22**

H. B. No. 115

(Passed March 8, 1963. In effect May 14, 1963)

**DEPOSIT OF COUNTY TAXES****An Act Amending Section 17-5-63, Utah Code Annotated 1953, Relating to the Accounting of Certain Tax Monies by Counties.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 17-5-63, Utah Code Annotated 1953, is amended to read:

**17-5-63. Taxes to Be Deposited in County Treasury.**

All such taxes shall as rapidly as they are collected be deposited into the county treasury.

Approved March 11, 1963.

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**CHAPTER 23**

H. B. No. 5

(Passed March 8, 1963. In effect May 14, 1963)

**AIR POLLUTION****An Act Amending Section 17-5-77, Utah Code Annotated 1953, Relating to Authority of County Commissioners to Pass and Enforce Ordinances; Providing for Air Pollution Ordinances.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 17-5-77, Utah Code Annotated 1953, is amended to read:

**17-5-77. Ordinances—Power to Enact—Penalty for Violation.**

The board of county commissioners may pass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by this title, and such as are necessary and proper to provide for the safety, and preserve the health, promote the prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein; and may enforce obedience to such ordinances with such fines or penalties as the board may deem proper; provided, that the punishment of any offense shall be by fine in any sum less than \$300 or by imprisonment not to exceed six months, or by both such fine and imprisonment. The board of county commissioners may pass ordinances to control air pollution.

Approved March 9, 1963.

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**CHAPTER 24****COUNTY IMPROVEMENT DISTRICTS**

S. B. No. 81

(Passed March 14, 1963. In effect May 14, 1963)

**An Act Amending Section 17-6-1, Utah Code Annotated 1953, as Amended by Chapter 29, Laws of Utah 1953, and Sections 17-6-3.5, 17-6-3.6, 17-6-3.10, Utah Code Annotated 1953, as Enacted by Chapter 29, Laws of Utah 1953, and Section 17-6-3.15, Utah Code Annotated 1953, as Enacted by Chapter 31, Laws of Utah 1957, and Section 17-6-22, Utah Code Annotated 1953, as Enacted by Chapter 26, Laws of Utah 1955, Relating to Improvement Districts; Authorizing Such Districts as Additional Purposes to Acquire Systems for the Collection, Retention and Disposition of Storm and Flood Waters; Authorizing the Issuance of Bonds Therefor; Authorizing Certain Contracts and the Making of Certain Covenants; and Containing a Severability Clause.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 17-6-1, Utah Code Annotated 1953, as amended by Chapter 29, Laws of Utah 1953, is amended to read:

**17-6-1. Improvement Districts—Boundover Authority to Acquire and Operate Water, Sewer and Sewage Systems.**

Improvement districts may be established in any county or counties in this state as provided in this act for the purposes hereinafter stated and shall have authority to acquire through construction, purchase, gift or condemnation, or any combination thereof, and to operate all or any part of the following or any combination thereof:

(1) Systems for the supply, treatment, and distribution of water; and

(2) Systems for the collection, treatment and disposition of sewage; and

(3) Systems for the collection, retention and disposition of storm and flood waters.

The area of any district created hereunder may include all or part of any county or counties including all or any part of any incorporated municipalities, other incorporated areas, and unincorporated areas, as the needs of the inhabitants of the proposed districts may appear. Where a district created under this act is operating any facility or system mentioned in this act, no other district overlapping such district, in whole or in part, may be created in such manner as to have authority to own or operate a facility or system of like kind.

Where any district is created under this act solely for the purpose of acquiring a system for the collection, retention or disposition of storm and flood waters, the board of county commissioners creating such district may, in its discretion and despite anything to the contrary in section 17-6-3.1, act as the board of trustees of such district for so long as it may consider desirable.

## **Section 2. Section Amended.**

Section 17-6-3.5, Utah Code Annotated 1953, as enacted by Chapter 29, Laws of Utah 1953, is amended to read:

### **17-6-3.5. Results of Election—Canvass—Resolution—Filing—Issuance of Bonds—Purposes—Maximum Bonded Indebtedness—Negotiability—Maturity and Redeemability—Interest—Payment—Sale.**

The results of the election shall be canvassed by the board of trustees and a resolution adopted by the board declaring the results, and a certified copy of such resolution filed in the records of the district. The results of all subsequent elections shall be similarly canvassed by the board of trustees and resolutions declaring the results of the elections adopted and filed.

If at any such election a majority of the qualified voters voting on any bond proposition shall vote in favor of the issuance of the bonds, the board of trustees shall proceed to issue such bonds or such amount thereof as it may determine. The bonds shall be issued for the purpose or purposes provided in the voted proposition, which may be the construction or acquisition of any improvement provided in section 17-6-1 hereof or any part or combination thereof or for improving and extending any such improvement or combination of improvements, and may include the payment of all legal, engineering and fiscal agent expenses reasonably incurred in connection with the construction, acquisition, improving, and extending of such improvements and with the authorization and issuance of the bonds. The bonds shall be fully negotiable for all purposes and shall never be issued in an amount which, together with all other existing indebtedness of the district then outstanding, will exceed in total principal amount twelve (12%) per cent of the assessed value of taxable property in the district as computed from the last equalized assessment roll for county purposes made and completed prior to the issuance of the bonds. Bonds issued in such manner that they are payable solely from revenues to be derived from the operation

of all or part of the facilities of the district, shall not be included as bonded indebtedness of the district for the purpose of such computation. All bonds not issued payable solely from such revenues shall be the general obligations of the district and the full faith, credit and resources of the district shall be pledged for the payment thereof, and regardless of any limitations contained elsewhere in the laws of Utah and this act, including section 17-6-3.8 it shall be the duty of the board of trustees to cause to be levied annually on all taxable property in the district taxes fully sufficient to pay principal and interest on such bonds as principal and interest fall due, or if the bonds are payable primarily from revenues, then to anticipate and make up any amounts which may be necessary to pay such principal and interest by reason of deficiencies in such revenues. The bonds shall mature at such time or times not more than forty (40) years from their date, shall bear interest at such rate or rates not greater than six per cent (6%) per annum, shall be payable at such place or places, shall be sold in such manner, and generally shall be issued in such manner and with such details as may be provided by the board of trustees in the resolution or resolutions authorizing the bonds. The bonds may be made redeemable in advance of maturity at such times and with such premium as may be provided in such resolution. The bonds shall be sold by the board of trustees in such manner and at such prices as may be determined by the board of trustees, except that bonds shall never be sold at a price which will result in a net interest cost to the district of more than six per cent (6%) per annum computed to maturity according to standard tables of bond values.

### **Section 3. Section Amended.**

Section 17-6-3.6, Utah Code Annotated 1953, as enacted by Chapter 29, Laws of Utah 1953, is amended to read:

#### **17-6-3.6. Certification to County Commissioners and Levy of Taxes for General Obligation Bonds—Issuance of Revenue Bonds—Covenants With Future Holder of Revenue Bonds—Delinquent Sewer Charges.**

Except as to bonds issued payable solely for operating revenues derived from the district's facilities, it shall be the duty of each board of trustees which has issued bonds hereunder to certify annually to the board or boards of county commissioners to levy annually until principal and interest shall have been fully paid, taxes on all taxable property in the district, fully sufficient to assure the prompt payment of principal and interest as each falls due, all as provided in section 17-6-3.5.

If any bonds issued hereunder are issued in such manner as not to be payable from taxes but to be payable solely from the revenues to be derived by the district from the operation of its facilities, the bonds so issued shall be payable from and secured by the pledge of all or any specified part of the revenues to be derived by the district from the operation of its facilities, and where the bonds are so issued it shall be the duty of the board of trustees to impose for all services rendered thereby rates fully sufficient to pay principal of and interest on the bonds and to carry out all commitments made in the resolution authorizing the bonds. The board may in such resolution enter into such

covenants with the future holder or holders of the bonds as to the management and operation of the facilities, the imposition and collection of fees and charges for water and services furnished thereby, the disposition of such fees and revenues, the issuance of future bonds and the creation of future liens and encumbrances against said facilities, the keeping of books and records, and other pertinent matters, as may be deemed proper by the board of trustees to assure the marketability of the bonds. The board may in its discretion undertake in said resolution to make the revenues of the facilities sufficient to pay the expense of the operation and maintenance thereof, and may undertake to make the revenues or net revenues of the facilities sufficient to produce in each year an amount in such specified excess of actual requirements for principal of and interest on the bonds in such year as the board may in its opinion consider necessary to assure the highest marketability of the bonds. If the board makes provision in the resolution authorizing the revenue bonds for the creation of a reserve fund to assure the prompt payment of principal and interest, the board may provide for the accumulation of such fund not only from the revenues of the facilities but also through the paying thereinto of such part of the bond proceeds as it may consider advisable. A proposition of issuing general obligation bonds and a proposition of the issuance of revenue bonds, or any combination thereof, may be voted upon at the same election.

When bonds are issued hereunder in whole or in part for sewer purposes and the district operates a waterworks system, provision may be made in the bond resolution pursuant to which charges for sewer service and water are to be billed in a single bill to each customer and payment of the charge for water accepted only when the charge for sewer service is paid at the same time. The board may agree to suspend water or sewer service, or both, to any customer who shall become delinquent in the payment of any charges due the district. Where bonds are issued hereunder in whole or in part for sewer purposes and the district does not operate a waterworks system, it may be provided in the bond resolution that any unpaid and delinquent charges for sewer service shall be certified by the clerk of the district to the treasurer or assessor of the county in which the delinquent premises are located, in which case such delinquent charges, together with interest and penalties, shall immediately upon such certification become a lien on the delinquent premises on a parity with and collectible at the same time and in the same manner as general county taxes are a lien on such premises and are collectible. All methods of enforcement available for the collection of such general county taxes, including sale of the delinquent premises, shall be available and shall be used in the collection of the delinquent sewer charges.

#### **Section 4. Section Amended.**

Section 17-6-3.10, Utah Code Annotated 1953, as enacted by Chapter 29, Laws of Utah, 1953, is amended to read:

#### **17-6-3.10. Refunding Bonds—Prerequisites—Procedure of Issuance—Sale or Exchange—Escrow of Proceeds for Sale.**

Any bonds issued under this chapter may be refunded pursuant to resolutions to be adopted by the board of trustees, in the manner here-

inabove provided for the issuance of other bonds, except that no hearing need be held and it shall not be necessary to submit the question of the refunding of the bonds to the voters of the district. Refunding bonds so issued may be secured in such manner and may be made payable from such sources as may be provided in the resolution authorizing their issuance, except that bonds payable solely from operating revenues may not be refunded into bonds payable from taxes. Refunding bonds so issued may be sold at public or private sale or may be exchanged for the bonds to be refunded. If sold, the proceeds of sale may be escrowed for the payment of the bonds to be refunded in such manner as may be provided in the resolution authorizing the refunding bonds. No bonds may be refunded hereunder unless they either mature or are callable for redemption under their terms within twelve (12) months from the date of issuance of the refunding bonds, or unless the holders thereof voluntarily surrender them for exchange or payment.

**Section 5. Section Amended.**

Section 17-6-3.15, Utah Code Annotated 1953, as enacted by Chapter 31, Laws of Utah 1957, as amended to read:

**17-6-3.15. Authority for District's Exercise of Other Powers Than Those Provided in Creation—Procedure—Hearing—Appeals.**

Any district heretofore or hereafter created or operating under this chapter or heretofore created under authority of chapter 6 of Title 17, Utah Code Annotated 1953, and having authority to acquire and operate less than all of the facilities and systems specified in section 17-6-1, whether such authority was acquired under the proceedings creating said district or under subsequent proceedings, may nevertheless (but subject to the limitation appearing in section 17-6-1) acquire and operate any or all of the remaining facilities and systems specified in said sections and exercise all of the powers pertinent thereto.

Before any such district shall so acquire any such additional facilities or system, if all or any part of the cost thereof is to be paid for from the proceeds of bonds payable in whole or in part from the proceeds of ad valorem taxes, the board of trustees of the district shall give notice of its intentions to acquire the additional facilities or system, which notice shall generally describe the nature and extent of the improvement proposed and its estimated cost (which estimate, however, shall not constitute a limitation upon the cost of the improvements thereafter constructed), the estimated amount of bonds it is proposed to issue (which estimate shall not be a limitation on the amount of bonds thereafter issued), and state that such bonds are in the discretion of the board to be payable in whole or in part from ad valorem taxes. Notice of such intended hearing shall be given by publication one time in a newspaper having general circulation in the district, which publication shall be made not less than fifteen days prior to the date fixed for the hearing. All interested persons may appear at the hearing either in support of or in opposition to the acquisition of such facilities or system and may be heard on the question of the adequacy of the benefits to accrue to any property in the district owned by them. At the conclusion of the hearing, or at any meeting to which the hearing may have been adjourned, the board of trustees shall adopt a resolution either finding that the proposed improvements will not sufficiently



benefit the taxable property in the district and should be abandoned, or that the taxable property in the district will be sufficiently benefited and that such an improvement shall be acquired. Any property owner who is aggrieved by the determination of the board of trustees may within fifteen days after the adoption of such resolution apply to the district court of the judicial district in which his taxable property in the district is located for a writ of review of the determination of the board of trustees, but only upon the ground that his property will not be benefited by the proposed improvements. A failure to apply for such writ of review within said time shall foreclose all owners of property within the district from the right further to object thereto.

#### **Section 6. Section Amended.**

Section 17-6-22, Utah Code Annotated 1953, as enacted by Chapter 26, Laws of Utah 1955, is amended to read:

#### **17-6-22. Municipalities—Power to Impose Charges on Parties for Sewage Treatment or Disposal—Collection.**

When any municipal corporation shall contract with any district operating under Chapter 6 of Title 17, as amended, for the supplying of sewage treatment or disposal service, or both, by such district to such municipal corporation, such municipal corporation shall have authority to make therefor such appropriate service charge to each party connected with its sewer system, as it shall deem reasonable and proper. If such municipal corporation operates a waterworks system, the charge aforesaid may be combined with the charge made for water furnished by the water system and may be collected and the collection thereof secured in the same manner as that specified in section 10-8-38, Utah Code Annotated 1953.

Any improvement district acquiring a system for the collection, retention and disposition of storm and flood waters shall have the power to contract with any one or more municipal corporations or other political subdivisions or persons, firms or corporations, and each such municipal corporation or other political subdivision or person, firm or corporation shall have the power to contract with such improvement district for the collection by the district or municipal corporation or other political subdivision, person, firm or corporation, of storm and flood waters from such other contracting party or parties and to pay for such service, and any parties to any such contract may agree to joint acquisition, ownership, construction, operation or maintenance, any or all, of all or part of any such system. In exercising the power to acquire and operate such systems, a district may construct storm sewers, drainage channels, dams, dikes, levees, reservoirs and other pertinent improvements.

#### **Section 7. Savings Clause.**

If any provisions of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved March 21, 1963.

**CHAPTER 25**

S. B. No. 190

(Passed March 14, 1963. In effect May 14, 1963)

**CIVIC AUDITORIUMS****An Act Prescribing Requirements to Be Observed by Any County Which Issues Bonds for the Purpose of Acquiring, Improving, Extending, Furnishing and Equipping Auditoriums, Sports Arenas, Stadiums, Convention Centers and Properties and Facilities Constituting a "Convention Complex", or Any Part of the Foregoing.***Be it enacted by the Legislature of the State of Utah:***Section 1. Requirements for Issuance of Bonds.**

Any board of county commissioners adopting proceedings authorizing the issuance of county bonds for the purpose of acquiring, improving, extending, furnishing and equipping auditoriums, sports arenas, stadiums, convention centers and all properties and facilities ordinarily forming a part of a so-called "convention complex", or for any part or combination of the foregoing, shall in the proceedings authorizing such bonds:

1. Provide for the creation of a board of directors which, so long as any of the bonds remain outstanding either in original or refunded form, shall have complete management and control of the facilities acquired with the proceeds of the bonds. Such board shall have the number of members, possessing such qualifications and selected for such terms, and shall operate pursuant to such rules and regulations as may be provided in such proceedings. The members of such board shall serve without compensation except for reimbursement of expenses actually incurred in the performance of their duties. After the appointment and organization of any board of directors, all vacancies thereafter occurring, whether by expiration of term or otherwise, shall be filled by majority vote of the remaining members of the board. Subject to the provisions of such proceedings, the members of the board of directors shall have the powers and duties ordinarily enjoyed by the directors of a private corporation operating similar facilities.

2. Provide that all revenues of every nature derived from the operation of the facilities so acquired with bond proceeds and not expended in the reasonable and proper costs of maintaining and operating the facilities, including the making of necessary repairs and replacements, be pledged to and utilized for the payment of principal of and interest on the bonds and, if so provided, the creation of a reserve for such purpose.

This act is adopted for the purpose of eliminating or reducing so far as possible the ad valorem taxes necessary to be levied for the payment of such bonds and for the purpose of improving the security of such bonds, and accordingly the holders of the bonds from time to time shall have a vested and enforceable contract right in the provisions of this act and in the provisions of the bond proceedings adopted pursuant hereto.

**Section 2. Severability Clause.**

If any one or more sections, sentences, clauses, phrases or provisions of this act are for any reason held to be invalid, all remaining parts of this act shall nevertheless continue to be valid and effective, the Legislature hereby declaring that provisions of this law are severable.

Approved March 20, 1963.

## CHAPTER 26

S. B. No. 185

(Passed March 14, 1963. In effect March 20, 1963)

## COUNTY IMPROVEMENT DISTRICTS

**An Act Amending Sections 17-7-12, 17-7-13, 17-7-14, 17-7-15, 17-7-18, 17-7-19, 17-7-20, 17-7-21, 17-7-22 and 17-7-27, Utah Code Annotated 1953, as Enacted by Chapter 32, Laws of Utah 1957, and Enacting New Sections to Be Known as 17-7-12.5, 17-7-18.5, 17-7-18.6, 17-7-19.5 and 17-7-29, Utah Code Annotated 1953, Relating to County Improvement Districts; Providing for Marking of Local Improvements and Financing Thereof Through the Levying of Special Assessments on Benefited Property and the Issuance of Bonds; Providing for Notices to Property Owners in Such Districts and the Contents of Such Notices; Providing the Time Within Which Protests Must Be Made Against the Making of Improvements, the Levy of Assessments and the Issuance of Bonds; Providing That Bonds May Be Issued at any Time After the Contract for the Improvements Has Been Let; Simplifying, Clarifying and Improving the Procedure to Be Followed in Levying Special Assessments and Issuing Bonds Payable Therefrom, and Validating, Ratifying and Approving and Confirming All Proceedings Heretofore Taken in Connection With Such Assessments and Bonds, and Making Certain Findings With Respect Thereto and Authorizing Alternative Methods of Procedure in Certain Cases.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Sections 17-7-12, 17-7-13, 17-7-14, 17-7-15, 17-7-18, 17-7-19, 17-7-20, 17-7-21, 17-7-22 and 17-7-27, Utah Code Annotated 1953, as enacted by Chapter 32, Laws of Utah 1957, are amended to read:

**17-7-12. Resolution—Contents—Assessment—Hearing.**

Such resolution shall in a general way describe the improvement proposed to be made and the estimated cost thereof as determined by the engineer of such county, who may be the county engineer or who may be an engineer or engineers specially retained by the county for such purpose, in which event the fees paid by the engineer shall be considered to be one of the costs of the improvement. Such resolution may designate one or several alternate kinds of materials or forms of construction. The engineer's estimate of cost shall include the estimated contract price, an additional amount for the purpose of paying the cost of engineering, legal fees, fiscal agent charges, inspection, publishing and mailing notices and a further amount not to exceed 10% of the estimated contract price to cover contingencies and other incidental costs. The streets, roads and alleys within any one improvement district need not be connected or contiguous. The entire cost of the improvement may be assessed against the benefitted property as herein provided or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefitted property.

**17-7-13. Publication of Resolution—Notice of Hearing—Benefited Property—Mailing Notice to Owners Which Will Be Assessed.**

Such notice shall be published in full one time in a newspaper of general circulation in the district or, if there be no such newspaper, by publication in a newspaper of general circulation in the county in which said district is located therein and by posting in not less than three public places in such district. A copy of such notice shall be mailed to the last known address of each owner of land within the proposed district whose property will be assessed for the cost of the improvement. The address to be used for said purpose shall be that last appearing on the real property assessment rolls of the county wherein said property is located. The mailed notice and the published notice shall state that a copy of the resolution creating the district is available at the office of the county clerk for inspection by any interested party.

**17-7-14. Public Hearing—Correction in Proposed List Assessments—Finding of Commission.**

On the date and at the time and place specified in the aforesaid notice, the board of county commissioners shall in open and public session hear all objections to the creation of the proposed district, the making of the proposed improvement, and arguments relating to the benefits accruing to any tract, block, lot or parcel of land therein. Such hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and after all persons desiring to be heard have been heard, the board of county commissioners shall consider the arguments put forth and may make such changes in the proposed improvements and in the area to be included in the district as it may consider desirable or necessary to assure adequate benefits to the real property in the district, but may not provide for the making of any improvements not stated in the aforementioned notice, nor for adding to the district any real property not included within the boundaries of the district. After such consideration and determination, the board shall adopt a resolution either abandoning the district and project or determining to proceed with the district and project, either as described in the notice or with changes made as above authorized. Such finding and resolution shall be final and no appeal may be taken therefrom.

**17-7-15. Failure of Person Who Will Be Assessed to Appear—Waiver of Objections.**

Every person who has real property within the boundaries of the district and who fails to appear before the board of county commissioners at the hearing and make any objection he may have to the creation of the district, the making of the improvements and the inclusion of his real property in the district, shall be deemed to have waived every such objection. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in section 17-7-18.6.

**17-7-18. Bids Exceeding Estimate—New Assessment List, Hearing, Notice, etc.**

If after bids have been received as above provided it shall appear that the cost of the improvement is going to be greater than estimated

by the engineer, the board shall determine whether to proceed with the improvement. If the board shall find that the cost of the improvement as so increased is in excess of the benefits to be derived by the property to be assessed, the improvement shall be abandoned and the resolution creating the improvement district rescinded. If the board shall determine to proceed with the improvement, it shall cause the construction contract or contracts to be executed and shall proceed with the levy of assessments as provided in this chapter.

**17-7-19. Completion of Work — Resolution Accepting Work — Actual Cost Less Than Amount Specified in Assessment List—Resolution as to Share of Cost Payable Other Than by Assessment—Levy of Assessment—Installments—Notice of Assessment—When Installments Due —Failure to Pay—Lien.**

The first installment of any assessment which is not paid in full within the time permitted by law shall become due on such date not more than fifteen months from the adoption of the assessment resolution as the board shall designate and one installment shall become due on the same day of the same month annually thereafter. The special assessments shall be carried on the tax rolls of the county and collected in the same manner as county taxes. The failure to pay any installment and the interest thereon when due shall ipso facto cause all other installments and the interest thereon to become due and payable and the board of county commissioners shall within thirty days from the date of such default proceed against the property for the collection of the total amount due thereon, including interest plus ten per cent additional on unpaid principal and interest as penalties and costs of collection. Special assessments levied hereunder shall rank on an equality with taxes levied against the property assessed by the state, the county and all other taxing districts, and no sale of property for the nonpayment of taxes or other special assessments shall extinguish the lien of other than the taxes or special assessments for the nonpayment of which such sale is had. The proceeds of the sale of any property for nonpayment of special assessments shall after the payment therefrom of the cost of collection be applied to the redemption prior to maturity of as many of the outstanding special improvement bonds as can be retired with the amount available. The lien of special assessments levied hereunder shall be superior to all other liens against the property assessed except that it shall be on a parity with the lien of ad valorem taxes and the lien of other special assessments and shall be effective from and after the date upon which the resolution levying the assessments is adopted.

**17-7-20. Partial Payments During Construction—Warrants—Interest—Payment.**

The board of county commissioners may from time to time as work progresses in any improvement district pursuant to contract duly entered into, make payments to the contractor for not to exceed ninety percent in value of the work theretofore done, based upon the estimates of the county engineer. Upon the completion of the improvements, the engineer, if he finds the work to have been completed satisfactorily and in substantial accordance with the plans and specifications, shall so certify to the board, with a recommendation that full payment be

made. The board, if it approves the recommendation, shall adopt a resolution so declaring, accepting the work contracted for and authorizing payment of the balance due. Such resolution shall make a declaration of the final cost of the improvement, including all expenditures authorized to be included therein. If the actual cost of the improvement as so declared is less than the amount upon which the corrected assessment list was made and the assessments levied, the surplus shall, at the option of the board of county commissioners, (1) be rebated to the owner of each piece of property assessed in the proportion which the amount assessed against such property bears to the total amount assessed against all property.

or (2) be paid into the fund from which principal of and interest on any bonds secured by such assessments may be payable, and after all bonds issued and the interest thereon are paid in full, any amount remaining shall then be rebated to the owner at the time of the rebate of each piece of property assessed in the proportion which the amount assessed against such property bears to the total amount assessed against all property. The person to whom such rebate shall be paid shall be the owner as shown on the last completed real property assessment rolls of the county. If an amount remains due to the contractor in excess of the proceeds of the assessments paid in full and the bond proceeds remaining available, the deficiency shall be made up from general county funds or from any other legally available source. In addition to liability for making up such deficit, the board shall advance from county or other funds amounts required from time to time to pay expenses incurred in connection with the improvement and the financing thereof prior to the time as of which bond and assessment proceeds become available. The board may reimburse itself for such advances from bond and assessment proceeds remaining after the contractor and other creditors have been paid in full, and if the amount so remaining proves insufficient, then from assessment proceeds remaining after the bonds have been retired.

**17-7-21. Bonds—Issuance—Interest—Term—Security Form.**

After the expiration of thirty days from the date of the adoption of the resolution levying the assessments, the board of county commissioners may issue negotiable interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. The bonds shall bear interest at not exceeding seven per centum per annum, payable semi-annually or annually, and shall mature serially over a period not exceeding twenty years, but in no event shall such bonds extend over a longer period of time than the period of time over which such installments of special assessments are due and payable and ninety days thereafter. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place, and shall be sold, authorized and issued in such manner, as the board of county commissioners may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest, and shall be secured by and payable from the irrevocable pledge and dedication of the funds derived from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds or if not so applied the same

shall be placed in the fund for the payment of principal of and interest on the bonds. The bonds shall be callable for redemption from the proceeds of the sale of any property sold for the nonpayment of special assessments but not otherwise unless the bonds on the face thereof provide for redemption prior to maturity, and the board may provide that the bonds shall be redeemable on any interest payment date or dates prior to maturity pursuant to such notice and at such premiums as it deems advisable. The bonds shall be signed by the chairman of the board of county commissioners, shall be attested by the clerk thereof under the seal of the board, and the interest coupons shall be signed by such officials. One of the signatures on the bonds and either or both of the signatures on the interest coupons may be facsimile signatures if so authorized by the board of county commissioners.

**17-7-22. Sale of Bonds—Exchange for Warrants—Bonds as Payment.**

The board may, in its discretion, require the construction contract or contracts to provide that all or part of the payments due the contractor thereunder shall be made through delivery to him of bonds issued pursuant to this chapter at the par value thereof plus interest accrued thereon to the date of delivery. The board may also require the contractor to purchase the bonds not so needed to satisfy payments due him under the contract and to pay therefor par and accrued interest to the date of delivery so that money will be available to be expended in the payment of other costs of the improvement not covered by the contract or contracts. No bonds may be sold at a price resulting in a net interest cost computed to maturity of more than seven per cent per annum according to standard tables of bond values.

**17-7-27. Errors or Irregularities Not to Void Assessment—Payment Under Protest—Notice—Action for Recovery—Exclusive Remedy—New Levy—Resolution Adopting Bonds—Notice—Limitation on Action to Test Validity.**

No special assessment levied under this chapter shall be declared void, nor shall any such assessment or part thereof be set aside in consequence of any error or irregularity permitted or appearing in any of the proceedings under this chapter, but any party feeling aggrieved by any such special assessment or proceeding may bring a civil action to cause such grievance to be adjudicated if such action is commenced prior to the expiration of the period specified in this section. The burden of proof to show that such special assessment or part thereof is invalid, inequitable or unjust shall rest upon the party who brings such suit. Any such litigation shall not be regarded as an appeal within the meaning of the prohibition contained in section 17-7-14 and 17-7-18.6.

Whenever any resolution authorizing the issuance of bonds under the provisions of this act shall have been adopted, such resolution shall be published once in the newspaper in which the original notice of hearing was published. For a period of twenty days thereafter any person whose property shall have been assessed and any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the legality of such bonds, the proceedings pursuant to which the assessments have been levied, and the proceedings pursuant to which said bonds are to be issued. After the expiration of such twenty day period, all proceedings theretofore had by

the board of county commissioners, the bonds to be issued pursuant thereto, and the special assessments and guaranty fund taxes from which such bonds are to be paid, shall become incontestable, and no suit attacking or questioning the legality thereof may be instituted in this state, and no court shall have authority to inquire into such matters.

### **Section 2. Sections Enacted.**

Sections 17-7-12.5, 17-7-18.5, 17-7-18.6, 17-7-19.5 and 17-7-29, Utah Code Annotated 1953, are enacted to read:

#### **17-7-12.5. Notice of Public Hearing—Description—Costs.**

Having created the district, notice of a public hearing on the proposed improvement shall be given in the manner provided in Section 17-7-13. Such notice shall:

1. Describe the boundaries of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;
2. Describe in a general way the proposed improvement, showing the streets or portions thereof along which it will be made, the nature of the improvement to be made in each such street or portion, and stating the width of each street or part of street to be paved, surfaced, or resurfaced pursuant to such improvement.
3. State the estimated cost thereof as determined by the engineer, including the estimated contract price and cost of engineering, legal and fiscal services, inspection, publishing and mailing notices, and other incidental costs, plus not more than 10% of said estimated cost for contingencies, and the portion of such estimated cost plus contingencies, if any, which is to be paid by the county;
4. State that it is proposed to assess the real property in the district to pay all or a designated portion of the cost of the improvement according to the benefits to be derived therefrom by each tract, block, lot and parcel of land within the district;
5. State the time and place at which the board of county commissioners will conduct a public hearing upon the ordering of such improvement and on the question of benefits to be derived by the real property in the district;
6. State that all interested persons will be heard and that any property owner will be heard on the question of whether his property will be benefited by the proposed improvement.

#### **17-7-18.5. Adoption of Resolution of Assessment.**

After the construction contract or contracts shall have been executed, the board shall cause to be prepared for adoption at the hearing hereinafter required a resolution declaring the cost of the improvement, including construction costs as reflected by the contract or contracts, and other incidental costs, engineering, legal and fiscal fees and costs, the cost of the publication of notices and all other costs properly incident to the construction of the improvement and the financing thereof, and in addition thereto, an amount not exceeding 10% of the total of the foregoing to cover contingencies. Such resolution shall also specify what share, if any, of the total cost plus contingencies ascertained as afore-



said is payable from sources other than the imposition of assessments and shall assess the remaining cost against the tracts, blocks, lots and parcels of land benefited.

After the preparation of the aforesaid resolution, the board shall adopt a resolution providing for the holding of a public hearing thereon and for the giving of notice of the proposed adoption of the resolution and the hearing thereon at a place and time to be specified in the resolution and notice. Such notice shall be published one time in the newspaper in which the first notice of hearing was published, at least twenty days before the date fixed for the hearing, and shall be mailed not less than fifteen days prior to the date fixed for such hearing to each owner of real property whose property will be assessed for part of the cost of the improvement, but the published notice and the mailed notice need not be identical. It shall be deemed sufficient compliance with the requirement for mailing if such notice is mailed to each person listed on the last completed real property assessment roll as the owner of a tract, block, lot or parcel of land to be so assessed. Each notice shall state that at the specified time and place the board will hold a public hearing upon the ordering of the improvement and the determination of benefits and the proposed assessment of the cost of the improvement, and shall state that any owner of property to be assessed pursuant to the resolution will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportionate share of the total cost of the improvement, and shall state further that a copy of the resolution proposed to be adopted levying the assessments against all real property in the district is on file for public inspection in the office of the clerk of the board and that, subject to such corrections and changes therein as may be made by the board, it is proposed to adopt the resolution at the conclusion of the hearing. Each notice shall also state that the amount of the assessment will become due and collectible immediately upon the adoption of the resolution levying the assessments and that if it is not paid within thirty days from the date of the adoption of such resolution it shall, at the expiration of such thirty days, commence to bear interest, and that it will be conclusively presumed that each owner exercises the right and option to pay the amount due in equal annual installments bearing interest at a rate not exceeding seven per cent per annum specified in the notice, payable semi-annually or annually and extending over the period of years not exceeding twenty specified in the notice. The published notice shall prescribe the boundaries or area of the district sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed.

**17-7-18.6. Public Hearing—Increase or Decrease of Assessment.**

On the date and at the time and place specified in the aforesaid notice, the board shall in open and public session hear all arguments relating to the benefits accruing to any tract, block, lot or parcel of land therein and the amount proposed to be assessed against any such tract,

block, lot or parcel. After the hearing has been concluded and all persons desiring to be heard have been heard, the board shall consider the arguments made and shall make such corrections in the proposed assessment resolution as it may consider just and equitable. Such corrections may eliminate or may increase or decrease the amount of the assessment proposed to be levied against any piece of property, but no increase of any proposed assessment shall be valid without the giving of new notice and the holding of a new hearing. After such corrections shall have been made, the board shall enter in the resolution its finding that no proposed assessment on the corrected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be so assessed and that no piece of property so listed will bear more than its proper proportionate share of the cost of such improvement, and shall adopt the resolution. Such finding and resolution shall be final and no appeal may be taken therefrom.

If by reason of elimination or reduction of any proposed assessments or for any other reason the total amount of assessments to be levied shall be less than the total or partial cost of the improvement allocated for payment from the special assessments, the deficiency shall be made up by the board from its general funds or from any other legally available source, including any premium received on the sale of bonds payable from said assessments. If it shall appear at any time that by reason of any deficiency, omission, error or mistake in the preparation of the assessment list or the resolution levying the assessments, any tract, block, lot or parcel appearing in the assessment list has not been fully assessed or has been assessed in an incorrect amount, the board shall adopt a supplemental resolution imposing against such tract, block, lot or parcel an assessment in the correct amount.

#### **17-7-19.5. Dates of Payment—Redemption.**

The board may in the resolution levying the assessments provide that all unpaid installments of assessments levied against any piece of property (but only in their entirety) be paid prior to the dates on which they become due if the property owner paying such installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments, together with such additional amount of interest as in the opinion of the board is necessary to assure the availability of money fully sufficient to pay interest on the bonds as interest becomes due and any redemption premiums which may become payable on the bonds in order to retire in advance of maturity bonds in a sufficient amount to utilize the assessments thus paid in advance.

#### **17-7-29. County Commissioner May Vacate Steps.**

The board of county commissioners may at any time vacate one or more of the steps previously taken, including the giving of notice of hearing, the holding of such hearing, the determination of benefits and proper proportionate share, the determination to proceed with the improvement, the letting of construction contracts, the acceptance of work done under such contracts, the reduction of proposed assessments, and the levy of assessments, but no such action may alter or rescind any construction contract without the consent of the other party or parties to such contract. Should the letting of any construction contract be

vacated, the work called for by said contract may be reduced or changed and the contract may be re-let to the same contractor without subsequent readvertising for bids. Any warrants which may have been issued in payment for work completed prior to vacating the letting of any such contract shall continue in full force and effect to the extent that they represent payments due for work done under any such contract as re-let. The board of county commissioners may recommend said procedure starting with the first step vacated and continuing with all subsequent steps required by this chapter.

If at any time after the holding of any hearing required to be held by this chapter, circumstances are such as to make it necessary or desirable to make any change in the determinations reached at such hearing, the board of county commissioners may call a supplemental hearing, of which notice shall be given in the manner required for the giving of notice of the original hearing, and the determinations and order made at the original hearing as modified or supplemented by the determinations and order made at the supplemental hearing shall have the same effect as though made in their entirety at the original hearing.

### **Section 3. Validating Proceedings.**

All proceedings heretofore taken and all construction contracts heretofore entered into by boards of county commissioners under the provisions of Chapter 7 of Title 17, Utah Code Annotated 1953, are hereby validated, ratified, approved and confirmed and, the legislature having caused due investigation to be made, it is hereby found and determined that each assessment levied or proposed to be levied under all such proceedings, as such assessments are listed in the final action taken thereon prior to putting same into collection, does not exceed the benefits to be derived by the tract, block, lot or parcel of land from the improvements for the making of which such assessment has been or is to be levied, and that no such assessment against any such tract, block, lot or parcel of land exceeds the proportionate share of the cost of such improvement properly allocable of such tract, block, lot or parcel of land.

### **Section 4. Completion Option of Board.**

If any board of county commissioners shall have heretofore commenced but not completed proceedings under Chapter 7 of Title 17, Utah Code Annotated 1953, prior to the effective date of this act, such board shall have the option of completing such proceedings in the manner provided by said Chapter as it existed prior to its amendment by this act, or in the manner provided by said chapter as hereby amended.

### **Section 5. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid the remainder of this act shall not be affected thereby.

### **Section 6. Emergency Clause.**

This act shall take effect upon approval.

Approved March 20, 1963.

## CHAPTER 27

S. B. No. 79

(Passed March 12, 1963. In effect May 14, 1963)

## COUNTY BONDS

**An Act Amending Section 17-12-1, Utah Code Annotated 1953, as Amended by Chapter 33, Laws of Utah 1957, and Enacting a New Section to Be Known as Section 17-12-3, Utah Code Annotated 1953, Relating to Bonds Issued by Counties; Providing for Limitations on Refunding of Such Bonds and Stating Certain Purposes for Which Bonds May Be Issued; Authorizing Joint Ownership of Facilities to Be Shared With a Municipality or Taxing Districts; and Containing a Severability Clause.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 17-12-1, Utah Code Annotated 1953, as amended by Chapter 33, Laws of Utah 1957, is amended to read:

**17-12-1. Election—Qualification of Voters—Notice—Limits Refunding—Joint Ownership.**

The board of county commissioners may contract a bonded indebtedness as follows: The board shall by order specify the particular purpose for which the indebtedness is to be created and the amount of bonds which it is proposed to issue, and shall provide for submitting the question of the issue of the bonds to the qualified electors of the county at the next general election or at a special election to be called by the board for that purpose. No one but such qualified voters as shall have paid a property tax in the county in which the election is being held in the year next preceding such election shall be permitted to vote upon the question of bonds. If the question is submitted at a special election, it shall be held, except as herein otherwise provided, as nearly as possible in conformity with the general election laws of the state. Notice shall be given of such election for four weeks prior thereto by publication in some newspaper published or having general circulation in the county; if there is no such newspaper, then by posting notices for the same time in each election district in the county and at the courthouse door. Ballots shall be printed by the board and furnished to the qualified electors, which shall read: "For the issue of bonds: Yes. No." If a majority of those voting thereon shall have voted in favor of incurring such debt, and not otherwise, the board may proceed to issue and sell the amount of bonds specified, which bonds may be registered or coupon form, and the board shall levy the tax necessary to pay the interest and to create a sinking fund for the payment of bonds in each and every year after their issue until the indebtedness is paid. The revenue derived from the sale of bonds shall be applied to the purpose or purposes specified in the order of the board and no other. Should there be any

surplus, it shall be applied to the payment of said bonds. In no event shall any county ever become so indebted to an amount, including existing indebtedness, exceeding two per cent of one hundred per cent of the reasonable fair cash value of the taxable property therein; as computed from the last equalized assessment roll for county purposes prior to the incurring of such indebtedness. Any bonds heretofore or hereafter issued or assumed by any county may be refunded at any time by the board of county commissioners when a lower rate of interest or better terms can be obtained or to provide means for the payment of maturing bonds. Bonds for refunding shall be issued as provided in this section, except that the provisions as to elections shall not apply.

### **Section 2. Section Enacted.**

Section 17-12-3, Utah Code Annotated 1953, is enacted to read as follows:

#### **17-12-3. Joint Ownership of Facilities.**

In addition to other purposes for which bonds may be issued, bonds may be issued for the purpose of acquiring, improving or extending systems for the collection, retention and disposition of storm and flood waters, for the acquisition, improvement or extension of public libraries, including equipment, furnishings and books therefor, acquiring or improving facilities for the collection, disposal or incineration of garbage and trash, acquiring, improving, extending, furnishing and equipping auditoriums, sports arenas, stadiums, convention centers and all properties and facilities ordinarily forming part of a so-called convention complex, or any part thereof and for acquiring, improving, extending, furnishing or equipping any improvement or facility which the county is authorized by law to own. Bonds may be issued for the county's share of any such facility to be owned jointly with any municipality or taxing district in the county and such joint ownership is expressly authorized.

### **Section 3. Severability Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved March 16, 1963.

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## **CHAPTER 28**

H. B. No. 158

(Passed March 14, 1963. In effect May 14, 1963)

### **CLAIMS AGAINST COUNTIES**

**An Act Amending Section 17-15-10, Utah Code Annotated 1953, Relating to the Presentation of Claims Against a County.**

*Be it enacted by the Legislature of the State of Utah:*

### **Section 1. Section Amended.**

Section 17-15-10, Utah Code Annotated 1953, is amended to read:

**17-15-10. Claims Against County—Presentation.**

The board of county commissioners shall not hear or consider any claim of any person against the county, nor shall the board credit or allow any claim or bill against the county, unless the same is itemized, giving names, dates and particular service rendered, or until it has been passed upon by the county auditor. If the claim is for services of process, it shall state the character of process served, upon whom, the number of days engaged and the number of miles traveled; if for materials furnished, to whom, by whom ordered, quantity and price agreed upon. Every claim against the county must be presented to the county auditor within a year after the last item of the account or claim accrued. In all cases claims shall be duly substantiated as to their correctness and as to the fact that they are justly due. If the board shall refuse to hear or consider a claim because it is not properly made out, it shall cause notice of the fact to be given to the claimant or to his agent, and shall allow sufficient time for the same to be properly itemized and substantiated.

Approved March 18, 1963.

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**CHAPTER 29**

H. B. No. 47

(Passed February 15, 1963. In effect May 14, 1963)

**SPECIAL BOOKS BY COUNTY RECORDER**

**An Act Repealing Section 17-21-7, Utah Code Annotated 1953, relating to the Use of Special Books by the County Recorder.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Repealed.**

Section 17-21-7, Utah Code Annotated 1953, is hereby repealed.

Approved February 15, 1963.

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**CHAPTER 30**

S. B. No. 109

(Passed March 14, 1963. In effect May 14, 1963)

**COUNTY SERVICE AREA AMENDMENTS**

**An Act Amending Section 17-29-5, Utah Code Annotated 1953, as Enacted by Chapter 28, Laws of Utah 1957, as Amended by Chapters 27 and 28, Laws of Utah 1959, and Chapter 34, Laws of Utah 1961, Sections 17-29-7 and 17-29-17, as Enacted by Chapter 28, Laws of Utah 1957, as Amended by Chapter 34, Laws of Utah 1961, and Section 17-29-11, Utah Code Annotated 1953, as Enacted by Chapter 28, Laws of Utah 1957, Relating to County Service Areas; Providing for Broadening the Powers Granted to Such Areas; Restricting Overlapping Areas; Providing for the Mailing of Notice of Hearing Under Certain Circumstances; Providing for Discontinuance of Services or Dissolution of Such Areas; Providing for the Effect of the Detachment of Territory in a First or Second Class City.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 17-29-5, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1957, as amended by Chapters 27 and 28, Laws of Utah 1959, and Chapter 34, Laws of Utah 1961, is amended to read:

**17-29-5. Area in County Service Area—Instituting Proceedings for Establishment—Overlapping Areas.**

A county service area may consist of all or any part or parts of any one county, except such part or parts of such county as at the time of the creation of the county service area lie within the limits of a city of the first or second class. County service areas may overlap if the service area which overlaps is entirely within the boundaries of the service area which it overlaps, provided not more than two (three, if one is county wide) service areas occupy the same area in the county and no overlapping areas may perform the same services. For the purpose of this act, cities of the third class and towns shall be considered as unincorporated areas. All parts of a county service area need not be contiguous. Proceedings for the establishment of such an area may be commenced at any time and shall be instituted by the board of county commissioners when:

1. The majority of the board of county commissioners vote in support of a resolution made by a member of that board, describing the boundaries of the territory proposed to be included in the area and specifying the type or types of extended county services already provided or to be provided; or

2. A petition is filed with the county clerk, requesting the institution of such proceedings signed by not less than ten per cent of the taxpayers owning real property which is located in the territory proposed to be included within the area. The petition may consist of any number of separate instruments.

The aforesaid resolution or the petition and all separate instruments related thereto, must describe the boundaries of the proposed area with definiteness and certainty.

**Section 2. Section Amended.**

Section 17-29-7, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1957, and as amended by Chapter 34, Laws of Utah 1961, is amended to read:

**17-29-7. Publication.**

The county clerk shall publish a copy of the resolution mentioned in section 17-29-6 in at least one newspaper of general circulation published in the county, or if no newspaper of general circulation is published in the county, then it shall be published in a newspaper of general circulation in the area. Such resolution shall be published at least once a week during three consecutive weeks, the first publication to be not more than sixty days nor less than twenty-one days prior to the time stated in said resolution for the public hearing. It shall not be necessary that said resolution be published on the same day of the week in each of three calendar weeks, but not less than twelve days shall intervene between the first publication and the last publication. If one of the services to be afforded by the area shall consist of the making

of improvements to streets, roads or alleys through lighting, curbing, guttering, surfacing, sidewalk construction or other street improvements, a copy of such resolution shall be mailed not less than fifteen days prior to the date fixed for such hearing to each owner of property whose property will be subject to taxation to pay part of the cost of such improvement. It shall be deemed sufficient compliance with the requirement for mailing if such notice is mailed to each person listed on the current county tax roll as the owner of property in the proposed county service area subject to taxation.

**Section 3. Section Amended.**

Section 17-29-11, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1957, is amended to read:

**17-29-11. Extension or Discontinuance of Service—Procedure.**

After the establishment of a county service area, the types of services provided may be extended by using the procedure mentioned in this chapter for the creation of the district, with appropriate changes in the wording of the required instruments. The board of county commissioners shall have authority to cause to be discontinued any services for which a county service area has been created or may dissolve any incorporated county service area if such area has no bonds or other indebtedness outstanding.

**Section 4. Section Amended.**

Section 17-29-17, Utah Code Annotated 1953, as enacted by Chapter 28, Laws of Utah 1957, and as amended by Chapter 34, Laws of Utah 1961, is amended to read:

**17-29-17. Part of County Service Area Subsequently Included in the City of the First and Second Class—Effect.**

Whenever any territory in a county service area is subsequently included within a city of the first or second class, that territory is forthwith excluded from the county service area upon the date of its inclusion in such city. Upon exclusion of such territory, all unencumbered funds standing to the credit of the county service area upon the date of the exclusion shall be divided between the incorporated area and the county service area in proportion to the assessed value of the taxable property of the territory excluded and the portion remaining. The unencumbered funds are the sums of money, uncollected taxes, and other uncollected accounts due such county service area, in excess of an amount sufficient to pay all claims. If at the time of the exclusion of any territory from a county service area the county service area has outstanding indebtedness payable from taxes, such exclusion shall not relieve the excluded territory from liability for the payment of taxes for such indebtedness and such territory shall continue to be subject to the annual levy of taxes for the payment of principal of and interest on such indebtedness in the same manner and to the same extent as it would have been so subject had it not been excluded.

Approved March 21, 1963.



**CHAPTER 31**

S. B. No. 14

(Passed February 8, 1963. In effect May 14, 1963)

**MODIFICATION OF COUNTY SERVICE AREAS**

**An Act to Require the Filing With the State Tax Commission of All Notices in Connection With the Incorporation, Establishment or Modification of County Service Areas, Special Purpose Districts, Cities and Towns, and Certified Copies of Proceedings for the Creation or Modification of Such Areas and Districts, Cities and Towns.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Notification to Tax Commission.**

From and after the effective date of this act, no county service area, special purpose district, city or town shall be incorporated, established or the boundaries modified, without a notification of same, being filed with the state tax commission within 10 days after the conclusion of the proceedings in connection therewith.

Such notice shall include a meters and bounds description of the area affected and shall contain a certification by the officers of the county service area, special purpose district, city or town that all the necessary legal requirements relating to such incorporation, establishment or modification have been fully completed.

**Section 2. Exceptions to Act.**

County service areas are all areas created pursuant to the county service area act. Special purpose districts shall include all political subdivisions of this state except school districts, cities, towns and counties.

**Section 3. Effective Date of Tax Levy.**

From and after the effective date of this act, property annexed to any existing taxing unit or property in any new taxing units shall not carry any levy imposed by said taxing unit until the taxable year following the year in which the filings with the state tax commission referred to in section 1 have been completed.

Approved February 11, 1963.

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**ELECTIONS****CHAPTER 32**

H. B. No. 130

(Passed March 8, 1963. In effect May 14, 1963)

**CHANGE IN REGISTRATION DATES**

**An Act Amending Section 20-2-6, Utah Code Annotated 1953, Relating to Election Registration Days, Eliminating Two Tuesdays and Providing for Two Saturday Registration Days.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 20-2-6, Utah Code Annotated 1953, is amended to read:

**20-2-6. Registration Days.**

Registration agents, when called upon to do so at their respective offices and not elsewhere, at any time between the hours of 8:00 o'clock a.m. and 9:00 o'clock p.m. of the first Tuesday, the third Tuesday and the fourth Saturday of August and of the fourth Saturday and the third Tuesday, and of the first Tuesday and in Presidential years, the first Wednesday prior to the general election, shall receive and register the names of all persons applying for registration who on election day will be legally qualified and entitled to vote in that election district according to the provisions of law under which such election may be held.

Approved March 11, 1963.

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**CHAPTER 33**

S. B. No. 201

(Passed March 14, 1963. In effect January 1, 1964)

**DIRECT PRIMARIES**

**An Act Amending Sections 20-3-2, 20-3-5, 20-3-8, 20-3-13, 20-3-23, 20-4-1, 20-4-2, 20-4-3, and 20-4-7, Utah Code Annotated 1953, Section 20-3-38, Utah Code Annotated 1953, as Amended by Chapter 41, Laws of Utah 1957, and Section 20-4-9, Utah Code Annotated 1953, as Amended by Chapter 42, Laws of Utah 1957, Relating to Election Laws; Providing for Changes in Direct Primaries and Party Conventions.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Sections 20-3-2, 20-3-5, 20-3-8, 20-3-13, 20-3-23, 20-4-1, 20-4-2, 20-4-3, and 20-4-7, Utah Code Annotated 1953, Section 20-3-38, Utah Code Annotated 1953, as amended by Chapter 41, Laws of Utah 1957, and Section 20-4-9, Utah Code Annotated 1953, as amended by Chapter 42, Laws of Utah 1957, are amended to read:

**20-3-2. Definition—Methods of Nominating Candidates.**

The words and phrases of this act shall, unless such construction be inconsistent with the context, be construed as follows:

(a) "November election" and "general elections" shall mean the regular general election for the election of state and county officers to be held on the first Tuesday after the first Monday in November, 1948, and each even-numbered year thereafter.

(b) "Regular primary election" shall mean the election on the second Tuesday of August at which candidates of all political parties and nonpolitical groups are voted for nomination. The words "primary convention" shall mean the political party conventions at which nominees for the regular primary election are selected. The word "convention" shall mean the political party conventions at which party officers and delegates are selected.

(c) "Judicial officers" shall mean any justice of the supreme court, any judge of the district court, any judge of a city court, and any jus-

tice of the peace; and the words, "judicial office," the office filled by any judicial officer.

(d) "Precinct" shall mean one or a group of voting districts.

(e) "Precinct officer" shall mean the constable and justice of the peace who are nominated at the primary election.

(f) "District" shall mean the smallest voting unit established as provided by law within which qualified electors vote at one polling place.

(g) "Political party" shall mean an organization of voters qualified to participate in an election in either of the two following ways:

(1) Any organization of electors which, under a common name or designation at the last preceding November election, polled for any of its candidates equivalent to two per cent of this total vote cast for all representatives in Congress.

(2) Any organization of electors whose organization did not participate in the last preceding November election or whose organizations polled for any of its candidates in the preceding November election a total vote equivalent to less than two per cent of the total vote cast for all representatives in Congress, which under a common name or designation, shall file with the secretary of state for office for which the electors of the entire state or a subdivision thereof greater than a county are entitled to vote a petition signed by qualified electors equal in number to at least five hundred qualified electors. Such endorsers of the petition need not necessarily be representatives or members of the group or party, whose petition they endorse. Said petition shall declare that signers endorse the doctrines of the party or group, the name of which shall be stated, and that they desire to participate and nominate officers by a state convention of all the members of the party who wish to participate in such convention. Be it further provided that at such convention the qualified candidates to appear on the ballot in the ensuing November election as representatives of such an organization of electors shall be decided by the vote of all the recognized members of such an organization who are present at the convention. Said petition for offices for which the electors of the entire state, or a subdivision thereof greater than a county are entitled to vote may also contain the platform of the party and shall be filed prior to the day of the regular primary election. The names of the electors so petitioning need not all be on one petition, but may be in one or more petitions, but each petition shall be verified by at least one signer thereof to the effect that the signers are qualified electors of the state according to the best of his or their information and belief. In order to qualify the aforementioned candidates of such an organization of electors who have been elected at the state convention of the organization of electors to appear upon the ballot at the ensuing November election under the name of the organization of electors, said organization shall file with the secretary of state prior to the day of the primary election a petition signed by at least five hundred qualified electors, not necessarily representatives of the principle or party whose petition they endorse. The names of the electors so petitioning need not all be on one petition, but may be in one or more petitions, but each petition shall be verified by at least one signer thereof to the effect that the signers are qualified electors of the state according to the best of his information and belief.

Such petition shall be headed with the names of all elected candidates of such organization of electors, and shall state that these persons desire to appear on the ballot in the ensuing November election under the name of the organization of electors which nominated them.

**20-3-5. Justices of Supreme Court and Judges of District Courts—Declaration of Candidacy for Judicial Position—Form of Declaration—Designating Number—Filing Fee—Judicial Nominating Ballot—Judicial Selection Ballot—Names of Candidates to Be on Ballot in Alphabetical Order of Surname—Form and Contents of Ballot—Marking Ballot—Canvassing Ballots—Withdrawal of Candidacy—Filing Withdrawal—Effect of Failure to Withdraw—Issuance of Certificate of Election—Time of Filing Application for Nomination.**

At the expiration of the term of a justice of the supreme court or judge of the district court, any member of the bar desiring to become a candidate for such vacancy during the month of June prior to the general election at which the vacancy is to be filled must file with the secretary of state a declaration of his candidacy for such office, in substantially the following form:

State of Utah, County \_\_\_\_\_, I, \_\_\_\_\_, being first duly sworn, say that I reside at \_\_\_\_\_ Street, City of \_\_\_\_\_, County of \_\_\_\_\_, State of Utah; that I am a qualified voter; that I am a candidate for nomination to the office of \_\_\_\_\_, which office is now held by Judge \_\_\_\_\_ and is to be voted upon at the primary election to be held on Tuesday, the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_. I hereby request that my name be printed upon the judicial primary ballot for nomination by such primary election for such office.

(Signed) \_\_\_\_\_

**Official character of officer taking oath**

(a) In any election at which two or more judges or justices of any court are to be voted for or elected for the same term, it shall be deemed that there are as many separate judicial offices to be filled as there are judges or justices of the court to be elected. The secretary of state shall designate each separate office by a distinguishing number not greater than the total number of offices and shall relate the number to the incumbent judge. The designation shall remain the same for all purposes both primary and general election and shall be used on all nomination papers, certificates of nomination, ballots, certificates of election, and all election papers referring to the office. After election and the issuance of the certificates of election, the designating number shall have no further significance.

(b) Candidates shall pay to the filing officer the fee provided by section 20-3-4, Utah Code Annotated 1953, for such filing.

(c) Candidates for the vacancy at both the primary election for nomination and the general election shall have their names placed on separate ballots which shall be designated "Judicial Nominating Ballot" to be used at the primary election, and "JUDICIAL SELECTION BALLOT" to be used at the general election. The names of the candidates for each designated office shall be placed on the ballots for the primary

and general election in the alphabetical order of the surnames, with the given name of each candidate to the left of the surname, provided, however, that an incumbent judge who is a candidate for retention in office for another term shall be named first upon both the primary and general ballots and shall be designated "Judge (insert his name), incumbent."

(d) The ballots shall show thereon opposite the name of each candidate a blocked off space as follows, and the voter in casting his or her vote shall place an "x" in the space so blocked which shall represent his or her choice of candidate appearing on said ballot for each designated office. The county clerks shall prepare for submission to the voters the ballots herein described as separate ballots, without any political party or other partisan designation other than the titles herein provided for. Any person voting at said primary and general elections shall be given such a judicial selection ballot at the same time and manner as he is given the primary and general election ballots as provided by law, and shall be required to return to the election judges and deposit in the ballot box said judicial nominating ballot and judicial selection ballot at the same time with the general election ballot. Said judicial nominating and selection ballots shall be handled, counted and the results certified in the same way as required by law for general election ballots. There shall be qualified for the general election the two candidates who have received the greatest number of votes at the primary election.

(e) Any candidate for the office of justice of the supreme court or judge of the district court may withdraw as such candidate upon filing with the secretary of state at any time prior to July 10th a withdrawal properly verified before a notary public. In the event any person files as a candidate and does not withdraw as herein provided, his name shall be placed on the ballot as such candidate. In the event there are only two to be selected for any office after withdrawals if any are deducted, the candidates who have not withdrawn shall become the nominees, and it shall not be necessary to place their names upon the primary ballot. Such persons shall be issued certificates of nomination by the secretary of state, and their names shall be placed on the judicial selection ballot for the general election. If only one candidate files for any specific office, such person shall forthwith be issued a certificate of election for the ensuing term by the secretary of state. All applications of persons for nomination for the office of justice of the supreme court and judge of the district court must be filed with and received by the secretary of state not later than 5:00 o'clock p.m. on the last day on which the filing may be made under this section.

#### **20-3-8. Regular Primary Election Day—Successful Candidates.**

The second Tuesday in the month of August of each even-numbered year is designated as regular primary election day, at which time each political party entitled and intending to make nominations for the next general election shall nominate its candidate for all elective offices and positions enumerated in the next preceding section to be filled at such general election including United States senators and congressmen when and as provided by law. Any candidate for the nomination for office of any political party who receives the highest number of votes cast for

candidates for such office at the regular primary election shall be nominated by said party for said office.

**20-3-13. Designating Offices to Be Filled—Publishing or Posting of Notice.**

On or before February 1st in each even-numbered year the secretary of state shall prepare and transmit to each county clerk a notice in writing, designating the offices for which candidates are to be nominated at such primary election. Within ten days thereafter each county clerk shall publish once in a newspaper published in such county so much of said notice as may be applicable to his county. If no newspaper be published in such county, the clerk shall cause a copy of such notice to be posted in a conspicuous place most likely to give notice of such election to the electors thereof in each voting district of such county and make affidavit of such posting, showing a copy of the notice and the places where posted.

**20-3-23. Judges of Election—Procedure as in General Election.**

On or before the fourth Monday in May of each year in which a primary election is to be held, the county central committee of each political party for each county shall nominate to the board of county commissioners of such county, in the same manner as provided in general elections, three qualified electors in each voting district to act as judges of the primary elections in such district and the board of county commissioners from such nominees for each district shall select the judges of the primary elections for such district in the same manner and number as is now provided by law for the selection of officers of general elections. Not more than two of the judges so selected shall be of the same political party. Said judges of primary elections shall perform all duties at the primary election now prescribed by law for the officers and judges of election at general elections, and they shall receive therefor the same compensation from the county. It shall be the duty of the proper county officers to furnish certified copies of the official register, together with the check lists of each election district, to one of the judges of the primary election as now provided by law for general elections. All rules and procedure prescribed for general elections shall apply at primary elections unless otherwise provided by this act.

**20-3-38. Independent Candidates — Nomination Certificates — Acceptances.**

Candidates for public office who do not wish to affiliate with a political party as defined in this act may be nominated otherwise than by a direct primary election in the manner following:

A certificate of nomination shall be prepared which shall contain the name or names of any candidate or candidates for the office or offices to be filled, their several post-office addresses, if any, their several residences, and, if in a city or town, the street number of residence and place of business, if any, and shall designate in not more than five words, instead of the party, the political or other name which the signers shall select; provided, that no name of any political party as defined in this act shall be used, in whole or in part for this purpose. Said certificate shall be signed by legal voters residing within the district or po-

litical division in and for which the officer or officers are to be elected to the number of at least three hundred when the nomination is for an office to be filled by the voters of the entire state, or at least one hundred where the nomination is for an office to be filled by the voters of a district less than a state and greater than a county, or by the voters of a county of at least fifty when the nomination is for an office to be filled by the voters of a county, district, ward or other division less than a county, other than a city. The signatures to said certificate of nomination need not all be appended to one paper, but no certificate shall be legal that does not contain the requisite number of names of voters whose names do not appear on any certificate previously filed under the provisions of this section; provided, that any such certificate of nomination may be amended in this last respect at any time on or before March 31st. The certificate may designate or appoint upon the face thereof one or more persons as a committee to fill vacancies and in case of vacancy in any such nominations, the same may be filled by such person or committee by a verified certificate to that effect, duly filed with the officer with whom the original certificate of nomination was filed at least thirty days before the date of election. Each voter signing a certificate shall add to his signature his place of residence and shall, before any officer duly authorized to administer the same, make oath by affidavit thereto attached that he is a voter within and for the political division for which such nomination is made and has truly stated his residence. Said certificate, when executed and acknowledged as before prescribed, shall be filed with the secretary of state when for an office or offices to be filled by the voters of the entire state or of any division or district greater than a county of with the county clerk when for an office or offices to be filled by the voters of an entire county or county district or city or municipality.

The certificate of nomination to be filed shall be filed with the proper official on or before March 31st. Should this date fall upon a Saturday, the deadline would be 1 o'clock p.m. of that day. Should this date fall upon a Sunday, the time would be extended to 5 o'clock p.m. on the following Monday.

No candidate may file as an independent candidate who has previously filed in the same year a declaration of candidacy with any political party.

Within eight days after the filing of any such certificate of nomination with the proper official as aforesaid, each and every candidate named in said certificate of nomination shall formally accept the nomination therein tendered in a written statement, duly acknowledged which said statement shall contain the full name and place of residence of such candidate and, if in a city or town, the street number of the same, if any there be, and his place of business, if any, and postoffice address.

When the provisions of this section have been complied with, the candidate or candidates named in such certificate of nomination shall be entitled to all the rights and subject to all the penalties of candidates nominated at direct primary elections. This section shall be liberally construed, so as to give independent candidates for public office every reasonable opportunity to make their candidacy effective.

**20-4-1. County Convention—Time of Holding—County Central Committee—Notice—Publication of Notice—Delegates—Mass Meeting—Notice of—Election of Delegates—Convening of Delegates—Organization of Delegates—Composition of County Central Committee—Number of Delegates to State Convention—Choosing of Delegates.**

(1) On or before the 15th day of August in each year in which a general election is not to be held a county convention of each political party shall be held in each county in the state. The county central committee of each political party shall cause notice of the holding of such county convention of its party to be mailed to each delegate elected or chosen to that party's county primary convention held the previous year, which notice shall be in substantially the following form:

Notice of \_\_\_\_\_ Party County Convention.

Notice is hereby given that the County Convention of the \_\_\_\_\_ party for \_\_\_\_\_ County will be held at \_\_\_\_\_ in \_\_\_\_\_, at \_\_\_\_\_ o'clock —.M. on \_\_\_\_\_ the — day of \_\_\_\_\_, 19 —.

At said Convention delegates of \_\_\_\_\_ County for the \_\_\_\_\_ State Convention will be elected and a county chairman, vice-chairwoman, secretary, treasurer and a central county committee, to serve for the ensuing two years will be chosen and other party affairs may be considered. Delegates to such County Convention shall be the same persons who were delegates to the \_\_\_\_\_ County primary convention which was held last year.

(2) At the time and place designated for such party county convention the delegates to each party convention shall convene at the place designated by the party's county central committee and there organize.

Convention Elect Officers and Delegates to State Convention.

(3) The delegates to each county convention shall elect a county chairman and a vice-chairman and the delegates to which the qualified electors of the party residing in the county are entitled in the party's state convention, and also elect the members of the county central committee of their party for the ensuing term, and take such other action consistent with the provisions of this act pertaining to the affairs of the party in such county as they may deem proper. The chairman and secretary of each county convention shall certify to the state convention the result of the election by the county convention of delegates to the state convention.

County Central Committee.

(4) The county central committee of a political party to be elected by the county convention of such party shall consist of such number of members as may be determined by the convention, but each voting district entitled to one or more delegates in the convention shall have at least one committeeman and one committeewoman, and no district shall have more than five.

Number of Delegates in Ratio to Votes.

(5) The number of delegates to the state convention of each party which shall be chosen in each county convention of such party shall be one delegate for each definite number of votes and major fraction there-



of cast in said county for the party's candidate for member of Congress at the next preceding November election, said number of votes for each delegate to be determined by the state central committee of each party, provided, that each county shall be entitled to at least one delegate. If such party shall have had no candidate at such election for the office of congressman, then the number of such delegates shall be in the proportions above set forth to the average vote cast at such election for all the party's candidates for state offices, excluding the vote for candidates who shall have had no opposition.

**20-4-2. Convention of Delegates—Time of Holding—Election of State Central Committee—Selection of Presidential Electors—Composition of State Central Committee—Term of Office of State and County Central Committees—Filling Vacancies—Executive Committee—Powers of Executive Committee—Powers and Duties of State and County Committees.**

(1) On or before the first day of September of each odd numbered year, the delegates elected to the state convention of each political party by the several county conventions of such party shall convene at such place in the state as the state central committee of such party shall designate and there organize. The convention shall elect a state central committee for the ensuing term and a chairman and a vice-chairman of opposite sex thereof.

**Composition of Committee.**

(2) The state central committee of each political party shall consist of qualified electors affiliated with such party from each county. The number of members of the state central committee of each party to which each county shall be entitled shall be determined in proportion to the combined votes cast for the party's candidates for the United States congressman at the next preceding November election. There shall be one committeeman for each definite number of votes so cast, said numbers to be determined by the state central committee of such party but there shall be at least two members, a man and a woman from each county in the state.

**Central Committees — Term of Office — Executive Committee — Vacancies.**

(3) The state and county central committees shall serve for two years and until their successors shall have been elected. Any vacancy in such committee or in the offices thereof, including the office of chairman, arising from death, resignation, or other cause shall be filled by the remaining members of the committee. Each such committee may elect from its membership an executive committee and shall, except as otherwise herein provided, choose its officers by ballot. Each such committee and its officers shall have general charge of the affairs of the party in the state or county, as the case may be, and have the powers usually exercised by such committees and officers thereof subject to the provisions of this act. The several state and county committees and the officers thereof now in existence shall exercise the powers and the duties herein prescribed until their successors shall be chosen in accordance with the provisions of this act.

**20-4-3. Place of Convention—Election of Nominees—Adoption of State Platform.**

After the first Saturday in June but not later than the fourth Saturday in June of each even numbered year, the delegates elected to the state primary convention of each political party by the several county primary conventions of such party, shall convene at such place in the state as the state central committee shall designate in a state primary convention and there organize and elect nominees to run on the party ticket at the regular primary election for all state offices and for the office of the United States senator to be filled at the ensuing November election, and shall adopt or state platform for such political party for the ensuing election period. In years of presidential elections they shall also select presidential electors and the necessary delegates and alternates to the national convention and select the National Committeeman and Committeewoman for the State of Utah.

**20-4-7. Selection of Nominees for County Offices—Time, Place, and Manner of Selecting.**

(1) After May 15th but not later than the first Saturday in June of each numbered year the delegates elected at the district mass meetings as hereinafter provided shall convene in each county at a time and place to be designated by the county central committee as a county primary convention and there organize and select nominees to run on the party ticket at the regular primary election, and select the delegates to which the qualified electors of the party residing in the county are entitled in the party's state primary convention. The number of delegates to the state primary convention of each party which shall be chosen in each county primary convention of such party shall be one delegate for each definite number of votes and major fraction thereof cast in said county for the party's candidate for member of Congress at the next preceding November election, said number of votes for each delegate to be determined by the state central committee of each party; provided, that each county shall be entitled to at least one delegate. If such party shall have had no candidate at such election for the office of congressman, then the number of such delegates shall be in the proportions above set forth to the average vote cast at such election for all the party's candidates for state offices, excluding the vote for candidates who shall have had no opposition.

(2) The county central committee of each political party in each county shall cause a mass meeting of the qualified electors of said county residing in each voting district, entitled to delegates in the county primary convention to be called and held in such district (on or before the fifth day preceding the date of the county convention) between the 21st day of April and the first Tuesday of May in each year in which a general election is to be held, and shall cause notice of the time and place of the holding of such meeting to be posted in at least three public places in said district at least five days prior to the date of such meeting; said notice shall specify the number of delegates to the county primary convention to be chosen at such meeting and said county central committee shall cause such further notice of such meeting to be given as the conditions existing in the district may reasonably require. The number of delegates from each voting district in each county to the coun-

ty primary convention of any political party for such county shall be in proportion to the number of votes cast within such district for the party's candidate for congressman at the then next preceding November election. The number of votes cast for congressman per delegate is to be determined by the county central committee, provided, that in all counties every district shall be entitled to at least one delegate to each county primary convention.

(3) At the time and place appointed therefor such mass meeting shall be convened in each district, and at such meeting a district chairman and vice-chairman, of the opposite sex, secretary, treasurer, and at least three committeemen and the delegates to which the members of the party residing in such district shall be entitled in the party's county primary convention, shall be elected by ballot. Such balloting, or the opportunity therefor, shall continue for at least one hour after the time the meeting opens for business and the result of such election shall be certified at the county primary convention of the party by the chairman and secretary of said meeting, provided, that if any district shall fail to elect delegates to any party's county primary convention the county central committee then in office may fill the vacancy from qualified members of the party in such district, and the secretary of such county central committee shall certify the same to the county primary conventions.

**20-4-9. Party Primary Convention—Candidates—Declaration of Candidacy—Designation of Nomination and Acceptance—Balloting and Voting—Selection and Certification of Nominees—Rules of Procedure.**

During the month of March of even-numbered years, all persons intending to become candidates at a primary convention for any elective office to be filled at the next ensuing November election shall file with the county clerk for all precinct, county and district offices solely within a county and with the secretary of state for all other offices, a declaration of candidacy and the county clerk or secretary of state shall forthwith certify to the chairman of the county or state committee of the party of which the candidate is a member, a copy of such declaration of candidacy; provided however, that in the alternative, 25 or more qualified electors may file with the appropriate foregoing officer a designation of nomination designating any qualified elector as a candidate for the nomination for an elective office. When such designation shall have been filed it shall be the duty of the officer in whose office it is filed to notify immediately, by registered mail, the elector named in such designation. If the elector named in the designation shall, by March 31st, file with the officer in whose office the designation was filed an acceptance of such nomination and pay the required fee, he shall be a candidate at the primary convention in like manner as if he had himself filed a declaration of candidacy. The signers of such designation of nomination shall all be of the same political party as the candidate so designated. The acceptance shall be in a form similar to that used by a candidate who files a declaration of candidacy. The officer in whose office such filings are made shall forthwith certify to the chairman of the county or state committee of which the candidate is a member, copies of such designation and acceptance. Should March 31st fall on a Saturday, the filing deadline shall be 1 o'clock p.m. of that day.

Should March 31st fall upon a Sunday, the filing time would be extended to 5 o'clock p.m. of the following Monday. In all other cases the filing deadline shall be 5 o'clock p.m. on March 31st.

#### Form of Declaration.

The form of the declaration of candidacy shall be substantially as follows:

State of Utah

County of \_\_\_\_\_

I, \_\_\_\_\_, hereby declare my intention of becoming a candidate for nomination by the \_\_\_\_\_ party for the office of \_\_\_\_\_. I do solemnly swear that I can qualify to hold said office both legally and constitutionally, if selected, and I reside at No. \_\_\_\_\_ Street in the City or Town of \_\_\_\_\_ State of Utah, and that I am a member of the \_\_\_\_\_ party; that I believe in and intend to support throughout my term, if elected, the principles and policies of such political party; that I affiliated with such party at the last general election and I voted for the majority of such party in the last general election (or did not vote at such general election, giving reasons); that I intend to vote for a majority of the candidates of said party at the ensuing election for which I seek to be a candidate; that if nominated as a candidate of said \_\_\_\_\_ party at said ensuing election I will accept such nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practice in campaigns and elections in this state, and that I will qualify for said office if elected thereto.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public (or other officer  
qualified to administer oath.)

#### Failure to File Declaration or Acceptance.

Any person who fails to file such a declaration of candidacy or to file his acceptance of designation of nomination within the time herein provided shall be ineligible for nomination for such office. At the time and place set for the state, district, county, or precinct primary conventions, the name of any person who has filed such declaration of candidacy, or such acceptance may be placed in nomination for the office for which such declaration was filed.

Following balloting all nominating and seconding speeches to be made on behalf of any candidate for an office to be filled by a precinct, county, district, or state primary convention, the delegates shall proceed to ballot for all contested offices on printed ballots which the county clerk or secretary of state, as the case may be, shall have cause to be printed. Such ballots shall have printed thereon the names of all persons who have filed declarations of candidacy or acceptance of designation. Voting shall be done in private booths in which no person other than the delegate casting a ballot shall be allowed and no delegate shall be allowed to occupy a booth for a period of time exceeding three minutes. No person other than a duly elected delegate shall be allowed to vote. In the event a duly

elected delegate shall die or become disqualified, the county central committee of the party to which the delegate belonged and of which he was a resident shall certify the name of an appointed delegate to fill such vacancy. After being marked the ballots cast by the delegate shall be folded so that no person can see the marks thereon and shall be deposited by the delegate in a common ballot box. Each delegate shall cast one vote for each office to be filled; provided, that where two or more candidates are to be elected to any office at the next ensuing general election each delegate shall cast as many votes for candidates for such office as there are candidates to be elected to such office at said general election. The ballots shall be counted by judges to be selected by primary convention. Voting shall be by secret ballot, and adequate time and voting facilities shall be provided to enable all delegates to cast their ballot. After time balloting commences, balloting shall continue for at least one hour thereafter, or for such additional time as will afford all duly accredited delegates an opportunity to cast their ballots. The two persons receiving the highest number of votes for any office to be filled at the next ensuing election shall be declared the party's nominees to run at the primary election next ensuing; provided, that where more than one candidate is to be elected to any office at the next ensuing general election, the candidate at the convention not exceeding twice the number of candidates to be elected at the ensuing general election who receive the highest votes at the primary convention shall be declared the party's nominees for such office. In the event that one candidate receives 80% or more of the votes so cast where only one office is to be filled, he shall become the party's candidate in the general election without the necessity of running in the primary election. The secretary of each primary convention shall immediately certify to the county clerk or the secretary of state, as the case may be, the names of the successful candidates at such primary convention election. Where the number of candidates filing declarations of candidacy, or acceptance of designation, is not greater than the number of candidates to be selected for any office at the next ensuing general election, such candidates shall be declared the party's nominees for such office and shall be certified as such by the county clerk or secretary of state, as the case may be, and shall not be required to run at either the primary convention or the regular primary election. Each political primary convention shall establish whatever rules it deems advisable governing its procedure, provided, that said rules be consistent with the laws of the state of Utah.

**Section 2. Effective Date.**

This act shall take effect January 1, 1964.

Approved March 22, 1963.

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## FISH AND GAME

### CHAPTER 34

S. B. No. 52

(Passed March 14, 1963. In effect May 14, 1963)

#### COMMISSIONER—SALARY

**An Act Amending Section 23-2-9, Utah Code Annotated 1953, as Enacted**

by Chapter 39, Laws of Utah 1953, as Amended by Chapter 32, Laws of Utah 1959, Relating to the Director of the Fish and Game Commission; Providing That the Fish and Game Commission Set the Salary of the Director and Requiring That the Salary Be Approved by the Governor.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 23-2-9, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1953, as amended by Chapter 32, Laws of Utah 1959, is amended to read:

**23-2-9. Director—Appointment—Term—Qualification—Salary.**

The fish and game commission, with the approval of the governor, shall appoint a fish and game director who may be removed by the commission. The director shall be a man with knowledge of, and experience in, the requirements for the protection, conservation, restoration and management of the wildlife resources of the state. He shall not hold any other public office, nor any office in a political party or organization and shall devote his entire time to the service of the state in the discharge of his official duties. The director shall receive a salary of a sum of money not to exceed \$10,600 per year to be determined by the fish and game commission, with the approval of the governor.

Approved March 18, 1963.

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**CHAPTER 35**

S. B. No. 112

(Passed March 9, 1963. In effect May 14, 1963)

**FISH AND GAME PROPERTY PURCHASES**

**An Act Amending Section 23-2-20, Utah Code Annotated 1953, as Enacted by Chapter 39, Laws of Utah 1953, and as Amended by Chapter 49, Laws of Utah 1961, Relating to Department of Fish and Game Property; Providing for Payment of Property Tax by the Department on Property Purchased From Private Persons.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 23-2-20, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1953, and as amended by Chapter 49, Laws of Utah 1961, is amended to read:

**Section 23-2-20. Fish and Game Fund, Creation and Disposition—Property Tax Payments.**

A fish and game fund is hereby created, and all monies collected from the sale of licenses, and all the net monies collected from fines and forfeitures, and such other monies as may be received under any provision of this Code shall be paid into said fund as provided in this Code. All monies paid into said fund shall be deposited in the state treasury and shall be drawn upon for the payment of salaries and expenses and other expenditures authorized in this Code upon authorization by the commis-

sion, with the consent of the governor. Prior to the purchase of any real property held in private ownership the department of fish and game shall first submit such proposition to the county commission in a regular open public meeting in the county wherein the property is located, and shall be contractual agreement with the county commission agree to pay annually an amount of money in lieu of real property taxes to the county. The department shall further by contractual agreement with the county commission in which any property previously acquired from private ownership and now owned by the department is located, agree to pay annually an amount of money in lieu of fish and game fine money, previously paid to the county, which annual payment shall be equal to the amount which the real property taxes on such department owned property would be if said property would have remained in the private ownership. The payments herein provided for will not exceed what the regularly assessed real property taxes would be if said land had remained in private ownership; and such payments in lieu of taxes or fine money shall not include any amount for buildings, installations, fixtures, improvements or personal property located upon the land and constructed or acquired by the department after it acquired the land.

The commission shall be empowered to record titles to real estate received or purchased as provided in this Code in the name of the Utah state department of fish and game, and shall have authority with the consent of the board of examiners to dispose of such properties by sale, exchange, barter or trade when such properties are no longer needed for fish and game purposes or when other properties having greater use for fish and game purposes are to be received in exchange. All records and other instruments pertaining to properties owned or acquired under this Title shall be kept in the offices of the department.

Approved March 11, 1963.

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## CHAPTER 36

H. B. No. 104

(Passed March 4, 1963. In effect May 14, 1963)

### LICENSE—BLIND RESIDENTS

**An Act Amending 23-7-8, Utah Code Annotated 1953, as Enacted by Chapter 39, Laws of Utah 1953, Providing for Issuance of Fishing Licenses to Persons Who Are Blind or Over the Age of 65 Years.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 23-7-8, Utah Code Annotated 1953, as enacted by Chapter 39, Laws of Utah 1953, is amended to read:

#### **23-7-8. Fishing Licenses for Residents Who Are Blind or Over 65 Years Old.**

A resident who is blind, upon the payment of 5 cents, or a resident over the age of 65 years, upon furnishing proof of his age upon forms fur-

nished by the commission and upon payment of the sum of \$1.00 may receive a license to angle for fish.

Approved March 5, 1963.

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## HEALTH

### CHAPTER 37

S. B. No. 59

(Passed March 14, 1963. In effect May 14, 1963)

#### STATE DIRECTOR—APPOINTMENT—SALARY

**An Act Amending Section 26-15-3, Utah Code Annotated 1953, as Enacted by Chapter 42, Laws of Utah 1953, as Amended by Chapter 43, Laws of Utah 1959, and Chapter 163, Laws of Utah 1961, Relating to the Director of Public Health; Providing That the Board of Health Set the Salary of the Director and Requiring That the Salary Be Approved by the Governor.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 26-15-3, Utah Code Annotated 1953, as enacted by Chapter 42, Laws of Utah 1953, as amended by Chapter 43, Laws of Utah 1959, and Chapter 163, Laws of Utah 1961, is amended to read:

#### **26-15-3. State Director of Public Health—Appointment—Qualifications—Salary—Removal—Term—Vacancy—Interim Director.**

On or before the 15th day of February of each odd numbered calendar year a state director of public health shall be recommended by the state board of health, appointed by the governor, and approved by the senate, and shall qualify by taking and subscribing the constitutional oath.

The state director of public health shall be a physician who is a graduate of a regularly chartered and legally constituted medical school, licensed to practice medicine and surgery in all branches in Utah. License may be secured within six months from the date of appointment. He shall have either successfully completed at least one year's graduate work in a recognized school of public health or shall have at least one year's professional full time experience in public health in an administrative capacity. He shall be thoroughly informed and experienced in matters relating to hygiene and sanitation and the management of infectious and contagious diseases. He shall devote his full time and attention to the duties of his office and shall receive a salary as determined by the state board of health with the approval of the governor, payable monthly following the date of his qualification, and he shall be paid other actual and necessary expenses when approved and allowed by the department of finance and on presentation of his verified and itemized account therefor. He may be removed by the state board of health for



cause. Unless sooner removed for cause his appointment shall be for a period of two years. Any vacancy in this office for whatever reason shall be filled as herein provided; except an interim director shall be appointed by the state board of health with the approval of the governor to provide administrative direction for the department of health in the absence of a qualified director. The interim director shall devote his full time and attention to the duties of his office and shall receive a salary as determined by the state board of health with the approval of the governor, payable monthly following the date of his qualification, and he shall be paid other actual and necessary expenses when approved and allowed by the department of finance and on presentation of his verified and itemized account therefor.

The term of office of an interim director shall be at the pleasure of the board of health but in no instance shall it be longer than as provided for the state director of public health. The interim director shall have and exercise such powers and duties as are conferred by law on the state director of public health.

Approved March 19, 1963.

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## CHAPTER 38

H. B. No. 81

(Passed March 14, 1963. In effect May 14, 1963)

### PUBLIC HEALTH AND MEDICAL RESEARCH

**An Act Relating to Public Health and Medical Research; Providing for the Use and Dissemination of Confidential Information Received by the State Department of Health, Utah State Medical Association, Allied Medical Associations or Societies, or In-hospital Staff Committees in the Course of Medical Studies for the Purpose of Reducing Morbidity or Mortality; Providing That Such Information So Received May Be Used Only for the Purpose of Advancing Medical Research and Medical Education; Providing for General Publication of a Summary of Said Studies; Providing an Exemption From Legal Liability for Those Furnishing Such Information and for Those Publishing Summaries of Such Studies; and Providing That Such Information and Any Findings or Conclusions of Such Authorized Groups Shall Be Privileged Communications Which May Not Be Used or Received in Evidence in Any Legal Proceeding.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Use of Confidential Information—Medical Research.**

Any person, hospital, sanitarium, nursing or rest home or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of

any person to the state department of health, the Utah State Medical Association or any of its allied medical societies, or any in-hospital staff committee to be used in the course of any study for the purpose of reducing morbidity or mortality; and no liability of any kind or character for other relief shall arise or be enforced against any such person or organization by reason of having provided such information or material or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

#### **Section 2. Publishing Data—Summaries—Findings.**

The state department of health, the Utah State Medical Association or any of its allied medical societies, or any in-hospital staff committee shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication.

#### **Section 3. Privileged Communications.**

All information, interviews, reports, statements, memoranda, or other data furnished by reason of this act and any findings or conclusions resulting from such studies are declared to be privileged communications which may not be used or received in evidence in any legal proceeding of any kind or character.

#### **Section 4. Identity of Persons Confidential—Penalty.**

All information, interviews, reports, statements, memoranda or other data so provided shall be held in strict confidence by the person or organization to which it is provided, and any use, release or publication resulting therefrom shall be so made as to preclude identification of any person or persons studied.

Any use, release or publication, negligent or otherwise, contrary to the provisions of this act shall be punished as a misdemeanor and shall not relieve the person or organization responsible therefor from civil liability for such use, release or publication.

Approved March 22, 1963.

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## **HIGHWAYS**

### **CHAPTER 39**

S. B. No. 108

(Passed March 13, 1963. In effect May 14, 1963)

### **HIGHWAY CODE**

**An Act Relating to Highways: Revising the General Highway Laws; Providing for a Declaration of the Intent of the Legislature in Relation Thereto: Providing for a Definition of Terms; Providing for a**

**State Road Commission, a Department of Highways, a Director of Highways, and Prescribing Their Powers and Duties; Providing for the Classification of State Highways, County Roads, and City Streets, and the Designation of State Highways; Providing for Livestock and Limited Access Highways; Providing for Acquisition of Rights-of-Way and the Construction, Maintenance, and Improvement of Highways; Providing for Distribution of Highway Funds to Counties, Cities, and Towns, and Assenting to Federal Aid; Providing for Limitation of Weight and Size of Vehicles on Highways; Providing for Regulation of Encroachments on Highways; Providing for Protection of Highways and Prescribing Penalties for Violation of Highway Laws; Providing for Assistance in Relocation of Utilities and Displaced Persons when Federal-Aid Funds Available; Providing for Severability; and Repealing Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9 of Title 27, Utah Code Annotated 1953, and All Sections in Said Chapters as They Have Been Amended or Enacted by Chapters 43, 44, 45, 46, Laws of Utah 1953, Chapters 41, 42, 43, 44, 71, Laws of Utah 1955, Chapters 52, 53, 54, Laws of Utah 1957, Chapters 21, 44, 45, 46, Laws of Utah 1959, and Chapters 56, 57, 58, 97, Laws of Utah 1961.**

*Be it enacted by the Legislature of the State of Utah:*

### **Section 1. Declaration of Legislative Intent.**

The legislature hereby determines and declares that an adequate and integrated system of state highways, county roads, and city streets is essential to the general welfare of the state of Utah.

The legislature intends to declare, in general terms, the powers and duties of the state road commission, leaving specific details to be determined by reasonable rules and regulations which may be promulgated by the commission. It is the intent of the legislature to grant sufficient authority to the state road commission to enable it and the director of highways to carry out the broad objectives stated herein.

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the state of Utah shall promote safety and efficiency by having an integrated system of highways, roads, and streets. The authority hereinafter granted to the state road commission and to the political and governmental subdivisions and public corporations of this state to assist and cooperate with each other is essential.

The legislature hereby determines and declares that this act is necessary for the preservation of the public peace, health and safety for the promotion of the general welfare, and as a contribution to the national defense.

### **Section 2. Definition of Terms.**

The following words and phrases when used in this act shall have the following meanings respectively ascribed to them, unless the context otherwise requires:

(1) "City or Town" means an incorporated municipality as listed in the latest federal census.

(2) "Commission" means the state road commission of Utah.

(3) "Construction" means the construction, reconstruction, replacement and improvement of the public highways, including the acquisition of rights-of-way and material sites.

(4) "Highway Authorities" means the state road commission or the legislative and governing body of a county, city or town.

(5) "Limited Access Facility" means a highway, road, or street especially designed for through traffic, and over, from, or to which neither owners nor occupants of abutting lands nor other persons have any right or easement, or have only a limited right or easement, of access, light, air, or view.

(6) "Maintenance" means the performance of all things necessary to keep a public highway in serviceable condition.

(7) "Person" means any person, firm, partnership, corporation, association, organization or business trust.

(8) "Public Highway" means any road, street, alley, lane, court, place, viaduct, tunnel, culvert, or bridge laid out or erected as such by the public, or dedicated or abandoned to the public, or made such in an action for the partition of real property, and includes the entire area within the right-of-way.

(9) "Right-of-Way" means land, property, or an interest therein, usually in a strip, acquired for or devoted to a highway, road, or street.

(10) "Section" means a section of this act unless some other section is specifically mentioned.

(11) "State Highway Purposes" shall have the meaning set forth in section 96 of this act.

### **Section 3. State Road Commission—Members—Qualifications—Term—Appointment—Compensation—Chairman—Quorum—Oath—Bond.**

The state road commission shall be composed of five members. The members of the state road commission shall enforce the provisions of law relating to state highways. The members of the commission shall be residents of Utah, no more than three of whom shall be members of any one political party and shall be appointed by the governor, with the advice and consent of the senate, on a part-time basis, for a term of six years, commencing on April 1 of odd numbered years. Two of the first commissioners to be appointed shall be appointed for terms of only two years and two of the first commissioners to be appointed shall be appointed for terms of only four years in order that terms may be staggered thereafter. Each commissioner shall hold office until his successor is appointed and qualified. The selection of the commissioners shall be as follows: one commissioner from district No. 1, comprising the counties of Box Elder, Cache, Davis, Morgan, Rich and Weber; one commissioner from district No. 2, comprising the counties of Salt Lake, Tooele, and Utah; one commissioner from district No. 3, comprising the counties of Carbon, Daggett, Duchesne, Emery, Grand, San Juan, Summit, Uintah, and Wasatch; one commissioner from district No. 4, comprising the counties of Beaver, Garfield, Iron, Juab, Kane, Millard, Piute, Sanpete, Sevier, Washington, and Wayne; one commissioner selected from the state at large. They shall receive no salary as members of the commission, but shall be paid a sum to be determined by

the board of examiners for each day actually spent in the performance of their duties and shall be reimbursed for actual and necessary traveling and other expenses incurred while in the service of the state. One member of the state road commission shall be designated by the governor as chairman. Any three commissioners shall constitute a quorum. Each member of the state road commission shall qualify by taking the constitutional oath of office and giving a surety bond in such form and in such amount as shall be determined by the department of finance, the premium on which shall be paid by the state.

#### **Section 4. State Department of Highways.**

There is hereby created a state department of highways, which shall be under the supervision and control of the state road commission.

#### **Section 5. Employment of Director of Highways.**

The state road commission shall employ, with the approval of the governor, a director of highways, who shall be the chief executive officer of the state department of highways. The director of highways shall be a qualified executive with technical and administrative experience and training, and shall possess such other qualifications as may be prescribed by the commission. He shall qualify by taking the constitutional oath of office and giving bond conditioned for the faithful performance of his duties in such amount and in such form as the department of finance shall determine. The commission shall fix his compensation and he shall be paid his expenses necessarily incurred while actually engaged in the performance of his duties in authorized travel from his office.

The state road commission may delegate such of its administrative duties to the director of highways as it deems necessary for the orderly and effective administration of the state highway program.

#### **Section 6. Road Commission Offices and Meetings.**

The state road commission shall maintain offices at the state capitol. It shall hold regular meetings at its said offices on dates to be fixed and formally announced by it, and may hold other meetings at such times and places as it may by order provide. Meetings may be held upon call of the governor, the chairman, the director or two members of the commission upon notice of the time, place and purpose of meeting given by mail, telephone or telegraph to each member of the commission at least seven days prior to the date of the meeting. Any meeting so called may be held upon shorter notice with the unanimous approval of the members of the commission.

#### **Section 7. Powers and Duties of Road Commission.**

The commission shall administer the state highways and exercise those powers and duties which relate to the determination and carrying out of the general policy of the state relating thereto. It shall exercise such control over the location, establishment, changing, construction and maintenance of highways as is provided by law.

#### **Section 8. Additional Powers and Duties of Road Commission.**

The commission shall have the following powers and duties in addition to such other powers and duties as may be provided by law:

(1) To formulate and adopt rules and regulations and establish programs for the expenditure of public funds for the construction, improvement and maintenance of state highways, and other purposes authorized by law, and for letting contracts for any work which the commission is authorized by law to do.

(2) To determine what portion or portions of any state highway shall be improved at the expense of the state.

(3) To make agreements with the approval of the governor on behalf of the state of Utah with other states and the United States Government, or any department of the same, in any manner affecting the state highways.

(4) To adopt regulations not in conflict with law in regard to traffic on state highways.

(5) To adopt such regulations governing the use by the public of state highways as may be necessary to provide for public safety and against undue use of the state highways.

(6) To provide for highway safety under the direction of a qualified highway safety engineer whose duty it shall be to conduct highway safety surveys and locate, designate and recommend the removal by the state road commission of highway hazards to safety.

(7) To furnish information to the traveling public regarding roads, road conditions and places of interest within the state.

(8) To prescribe standard guide boards and road signs or other devices for the guidance of traffic and regulate or prohibit the use of all other guide boards and road signs on any state highway; to classify, designate and mark the state highways and to provide a uniform system of marking and signing highways, and such system of marking and signing shall correlate with and so far as possible conform to the system adopted in other states; to determine the character or type of and to place or erect upon state highways traffic control signals at places where the commission shall deem necessary for the safe and expeditious control of traffic, and so far as practicable all such traffic control signals shall be uniform as to type and location. No traffic control signal shall be erected or maintained upon any state highway by authority other than the state road commission, except with its written approval.

(9) To have jurisdiction over and to plant, water, prune, cut, remove or otherwise care for trees, shrubs and other vegetation within the limits of state highways and to enter into agreements with adjoining property owners, municipalities, park and water commissioners, public officials or other persons for the planting, care or removal of trees, shrubs and other vegetation within or outside the highway limits.

(10) To adopt reasonable regulations for making all records, maps, profiles and papers in the offices of the commission available for public inspection and reference.

(11) To adopt a seal and file a description and impression thereof in the office of the secretary of state.

(12) To submit to the governor biennially, on or before the last day of October preceding each regular session of the legislature, a report of all expenditures, together with a statement of the work accom-

plished, and also a statement of the general condition of the roads of the state, with such recommendations as the commission may deem proper.

(13) To use its equipment, materials, and expend the necessary funds, to open roads not designated as state highways in case of flood, storm or other emergency.

(14) To prescribe the qualifications and duties of all employees of the state department of highways; to employ and remove such professional and technical personnel as required, with salaries or other compensation fixed by the commission, and other personnel as required, with salaries and wages fixed according to schedules established for state personnel; to employ or retain outside professional consultants or specialists when it is deemed to be in the best interest of the state, with salary or other compensation fixed by the commission; to employ a secretary to the commission, who shall certify to documents and affix its seal, with salary to be fixed by the commission.

(15) To send its members or other representatives to attend such meetings, within the state, or, with the approval of the governor, without the state, as it deems will be of benefit to the work of the commission.

(16) To test road materials, and to conduct experiments and make investigations with reference to road construction whenever the commission shall deem it necessary.

(17) To expend sufficient of the funds allocated to the commission to accomplish the purposes of this act.

#### **Section 9. Commission May Sue and Be Sued.**

By its name the commission may sue, and it may be sued only on written contracts made by it or under its authority.

#### **Section 10. Commission May Settle Claims.**

The commission is given authority to settle all claims not in excess of three thousand dollars for each claimant arising out of accidents, damage or injuries caused through the negligence of the commission, its employees, or any employees of the state department of highways in the course of their employment.

#### **Section 11. Utility Relocation.**

The commission is authorized (1) to make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of all facilities and drainage and irrigation systems (herein called "facilities") of any utility in, on, along, over, across, through, or under any project on the federal-aid primary or secondary systems of highways as the same now are or may hereafter be defined by Act of Congress, or on the interstate system, as herein defined, including extensions thereof within urban areas. Whenever the commission shall determine that it is necessary that any such facilities which now are or hereafter may be located in, on, along, across, over, through or under any such federal-aid primary or secondary system or on the interstate system, including extensions thereof within urban areas, should be relocated, the utility or political subdivision owning or operating such facilities shall relocate the same in accordance with the order of the commission; provided, however, that the cost of relocation in connection with the highway systems as defined in this paragraph, shall

be paid by the commission in all cases where proportionate reimbursement of such cost may be obtained by the state of Utah from the United States pursuant to the Federal-Aid Highway Act of 1956, and in all cases where the facility is owned or operated by a political subdivision whether or not federal reimbursement may be obtained. In case of any such relocation of facilities as aforesaid, the utility or political subdivision owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations.

(2) For the purposes of this section, the term "utility" shall include privately, cooperatively and publicly owned facilities, including drainage and irrigation systems and utilities owned by all political subdivisions.

(3) For the purposes of this section, the term "cost of relocation" shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

(4) "Interstate system" means any highway now included or which shall hereafter be included as a part of the national system of interstate and defense highways, as provided in the Federal-Aid Highway Act of 1956 and any acts supplemental thereto or amendatory thereof.

(5) The cost of relocating utility facilities in connection with any project on the federal-aid primary or secondary systems or on the interstate system is hereby declared to be a cost of highway construction.

## **Section 12. Reimbursement for Moving Costs.**

(1) In order to compensate eligible persons for the reasonable and necessary moving expenses incurred as a result of their displacement from real property acquired for a federal-aid highway project, the state road commission may make such relocation payments as are provided for in this section, which payments shall be considered a part of the cost of construction; provided, however, that such relocation payments shall be made only when proportionate reimbursement is obtained by the state of Utah from the United States pursuant to the Federal-Aid Highway Act of 1962.

(2) Payments under this section shall be subject to regulations of the state road commission, and shall not exceed \$200 in the case of an individual or family, or \$3,000 in the case of a business concern (including the operation of a farm) or nonprofit organization. In the case of a business (including the operation of a farm) and in the case of a nonprofit organization, the allowable expenses for transportation under this subsection shall not exceed the cost of moving 50 miles from the point from which such business or organization is displaced. Regulations of the state road commission may include provisions authorizing relocation payments to individuals and families of fixed amounts, not to exceed \$200 in any case, in lieu of their respective reasonable and necessary moving expenses.

(3) As used in this section the term "eligible person" means any individual, family, business concern (including the operation of a farm) and nonprofit organization displaced by construction of a federal-aid highway project.



(4) This section shall apply only with respect to eligible persons displaced on a federal-aid highway project after the effective date of this act.

#### **Section 13. Attorney General to Counsel Commission.**

In all matters requiring legal advice in the performance of its duties and the prosecution or defense of any action growing out of the performance of its duties the attorney general, and the district attorney of the district in which any legal question arises, shall be the legal advisers of the state road commission, and they are hereby required to perform any and all legal services required of them by the state road commission without other compensation than their salaries.

#### **Section 14. Cooperation With Counties, Cities and Towns.**

The commission shall cooperate with the counties, cities and towns in the construction, maintenance, and use of the public highways and in all matters relating thereto, and may provide services to the counties, cities and towns on such terms as may mutually be agreed upon. It shall cooperate with the federal government, with the approval of the governor, in all federal-aid projects, and shall cooperate with all state departments in all matters in connection with the use of the public highways.

#### **Section 15. Commission to Hold Hearing Before By-passing a City or Town.**

It shall be the duty of the state road commission whenever the commission proposes to construct a highway bypassing any city or town, or to provide an alternate route through or outside any city or town, to notify the governing officials of the city or town and to hold a public hearing, on a date set, for the purpose of advising the citizens of the city or town of the reason or reasons for the highway proposed to be constructed. Such hearing shall be held within such city or town, except that in the event it is proposed to bypass or provide an alternate route through or outside of several cities or towns located within close proximity of each other, the road commission may, in its discretion, combine the hearings and hold them in one of said cities or towns centrally and conveniently located to the others at which time each city and town shall be given ample opportunity to be heard. Subsequent to any such hearing, it shall be the duty of the state road commission to notify in writing the officials of said city or town, or of each of said cities or towns if the hearings are combined, as to the decision reached as a result of such hearing within ten days from the time said decision is reached.

#### **Section 16. Cooperation With Other Departments.**

The state road commission shall cooperate with the Utah tourist and publicity council, with other states, with all national, state and local planning and zoning agencies and boards, and with city and county officials and with other agencies in planning and promoting road building programs into the scenic centers of the state and in providing camping grounds and facilities in such centers for tourists.

**Section 17. Roads to Salt Flats and Ski Areas.**

The state road commission is hereby authorized at its discretion to build and maintain roads leading to roads and parking spaces on the grounds of state institutions to which roads have not been designated by the legislature; also roads and parking spaces to serve areas used for salt flat races, ski meets, and activities which are promoted for the general welfare when such areas are in immediate proximity to a designated highway.

**Section 18. Race Courses on Salt Flats.**

The commission is hereby authorized at its discretion to prepare and maintain race courses on the salt flats at a cost not to exceed \$15,000.00 in any one year.

**Section 19. Checking Stations.**

The Utah state road commission is hereby authorized and directed to construct inspection and checking stations for the purpose of checking traffic. Such stations shall be located on state highways at such points and places as the state road commission shall determine.

**Section 20. Universities to Cooperate.**

The engineering machinery and apparatus, and the force of mechanics and instructors operating the same, in the University of Utah and the Utah State University shall be at the disposal of the state road commission, and any member of the faculties of said institutions shall furnish any information or assistance desired upon request of the state road commission.

**Section 21. State Highways—Class A.**

All roads and streets within the state which, by legislative action or as otherwise provided by law, are designated as state highways shall be known as class A state roads. The state road commission shall have jurisdiction and control over all state highways and said highways shall be constructed and maintained by the commission from funds which shall be made available for that purpose.

**Section 22. County Roads—Class B.**

All public roads and streets within the state not designated as state highways which are situated outside of incorporated cities and towns and such roads and streets situated within incorporated cities and towns that have been designated as county roads, shall be known as county roads and shall be under the jurisdiction and control of the county commissioners of the respective counties. County roads shall also be known as class B roads. Such roads shall be constructed and maintained by or under the authority of the county commissioners of the respective counties from funds made available for that purpose, and the county commissioners shall have authority to expend or by contract cause to be expended such funds as are allocated to each county from the state road fund under rules mutually adopted by county commissioners and the state road commission. The amount used annually from the state road funds for this purpose, together with such other amounts from federal, county or other sources as may be made available shall con-

stitute the funds to be spent in constructing and maintaining class B roads.

When in the opinion of the county commissioners the funds available for road purposes from sources other than the levy made against tangible property are adequate to properly construct and maintain the class B roads, such county may cease making a levy for county road purposes, or, at its option, may use any portion of the class B road funds provided by this act for the construction and maintenance of class A state roads by cooperative agreement with the state road commission.

### **Section 23. Cities and Towns—Class C.**

All public roads or streets within the corporate limits of the cities and towns of the state which are not designated as class A state roads or as class B roads shall be known as city streets and shall be under the jurisdiction and control of the governing officials of the respective cities and towns. City streets shall also be known as class C roads. The state road commission shall cooperate with the governing officials of each of such cities and towns in the construction and maintenance of the class C roads within every such city or town, and the officials of each of such city or town shall expend or cause to be expended upon such class C roads the amount allocated to each such city or town from the state road fund under rules and regulations mutually adopted by the city officials and the state road commission. Any town or city in the third class may contract with the county commissioners or the state road commission for the construction and maintenance of class C roads within its corporate limits or with the consent of the county commissioners may transfer its class C roads to the class R road system and the funds allocated from the state road fund to any such town or city shall be used by the county commissioners upon the roads so transferred under rules mutually adopted by the county commissioners and the state road commission.

When in the opinion of the governing officials of any town or city in the third class the funds available for road purposes from sources other than the levy made against tangible property are adequate to properly construct and maintain the class C roads within any such city or town, the governing officials thereof may use any portion of the class C road funds allocated to such town or city for the construction of sidewalks and curb and gutter on class A state roads within the municipality limits by cooperative agreement with the state road commission.

### **Section 24. Actions to Determine Priority of Use of Roads.**

All actions involving determination of a priority of public use of all highways, roads, streets, paths and ways not otherwise designated as a federal highway, state highway, county road, city street, or special highway shall be by the county attorney under and by the direction of the county commissioners in which the so designated way resides. This action may be instigated by the written request of ten taxpayers of said county to the county commissioners in the county in which the undesignated way is situated. The county commissioners shall request the county attorney to instigate action within a reasonable length of time.

**Section 25. Control of Highways, Roads, Paths or Ways Not Otherwise Designated.**

All highways, roads, paths and ways not designated as a federal, state, city or special highway, road, path, or way shall remain under the direction of the county commissioners in the county where they are located.

**Section 26. County Commissioners to Plat Roads.**

It shall be the duty of the board of county commissioners of each county to determine all county roads existing in its county, outside of cities and towns, and to prepare and keep current plats and specific descriptions of the same and of such other highways as such board may from time to time locate upon public lands, which shall be kept on file in the office of the county clerk or recorder.

**Section 27. Federal-Aid Projects Designated State Highways.**

At each regular session of the legislature, the legislature shall add to or delete highways or sections of highways from the state highway system as it sees fit. For this purpose, the state road commission shall submit to each such session a list of highways or sections of highways which it recommends for addition to or deletion from the state highway system. Any addition or deletion to the state highway system shall be based on minimum qualifying standards as established by the state road commission after consultation with the legislative council.

Between each regular session of the legislature, all federal aid highways approved by the state road commission may be designated as state highways by the commission; provided, however, that a list of all such highways shall be submitted to the next regular session of the legislature for the approval or disapproval of the legislature.

**Section 28. Disposition of Highways Deleted From State System.**

When a state highway or portion thereof is deleted from the state highway system by act of the legislature, the commission shall return or relinquish such highway or portion thereof to the county, city, or town in which it is situated, or abandon such highway or portion thereof if no longer serving the purpose of a public highway.

**Section 29. Disposition of Portion of Highways Realigned.**

The commission may make such changes in the alignment of state highways as in the judgment of the commission will provide for greater safety or will result in more economical highway operation and maintenance. When a state highway is so realigned, the former portion thereof may in the discretion of the commission be returned or relinquished to the county, city, or town within which it is situated to be maintained as a public highway, or vacated or abandoned as such by the commission if no longer serving the purpose of a public highway.

**Section 30. Designation of City Streets as State Highways.**

Whenever the route of a state highway extends into or through a city or town and the legislature has not specifically designated the location of such highway within the city or town, the commission, in cooperation with the city or town, shall select and designate the streets of the

city or town over which the state highway shall be routed. Upon such designation, such streets shall be part of the state highway system without compensation to the city or town.

### Section 31. State Highways—Routes 1 to 5.

The following named roads are designated as state highways:

(a) Route 1. From the Utah-Arizona state line near St. George through or near Provo, Salt Lake City, Ogden and Tremonton to the Utah-Idaho state line south of Malad, Idaho.

(b) Route 2. From the Utah-Nevada state line at or near Wendover through or near Salt Lake City, to the Utah-Wyoming state line southwest of Evanston, Wyoming.

(c) Route 3. From the Utah-Idaho state line near Snowville to a point on interstate route 15 (SR 1) near Elwood; thence from another point on interstate route 15 (SR 1) near Roy to interstate route 80 near Echo (SR 2).

(d) Route 4. From interstate route 15 (SR 1) at Cove Fort through or near Richfield, Salina and Green River to the Utah-Colorado state line west of Grand Junction, Colorado.

(e) Route 5. From a junction with interstate route 80 (SR 2) near the mouth of Parleys Canyon southeast of Salt Lake City, southwesterly near the south city limits of Murray, junctioning with interstate route 15 (SR 1), thence northwesterly, northerly and easterly to a junction with interstate route 15 (SR 1) north of Salt Lake City.

### Section 32. State Highways—Routes 6 to 10.

The following named roads are designated as state highways:

(a) Route 6. From Silver Creek Junction on route 2 via Heber, Duchesne, Roosevelt, and Vernal to the Utah-Colorado state line.

(b) Route 7. From Provo on route 1 (interstate route 15) via University Avenue, Olmstead and Provo Canyon to Heber on route 6.

(c) Route 8. From Springville on route 1 southeasterly via Spanish Fork Canyon, Thistle, Soldier Summit, and Price, to a junction with route 4 west of Green River.

(d) Route 9. From Crescent Junction in route 4 southeasterly via Moab and Monticello, thence southeasterly to the Utah-Colorado state line.

(e) Route 10. From a junction with route 4 near Fremont Junction northeasterly via Emery, Ferron, Castle Dale, and Huntington to Price on route 8.

### Section 33. State Highways—Routes 11 to 15.

The following named roads are designated as state highways:

(a) Route 11. From the Utah-Arizona state line south of Kanab northerly via Kanab, Glendale, Panguitch, Junction, Marysvale, Richfield, Gunnison, Pigeon Hollow Junction, Fountain Green and Nephi on route 1.

(b) Route 12. From Bryce Canyon Junction on route 11, via Red Canyon and Tropic Junction to Bryce Canyon National Park boundary.

(c) Route 13. From Logan on route 85 to Garden City on route 16.

(d) Route 14. From Cedar City on route 1 southeasterly via Coal

Creek Canyon and Cedar Breaks Junction to Long Valley Junction on route 11.

(e) Route 15. From Anderson Junction on route 1 southeasterly via Toquerville and Rockville to Zion National Park south boundary; and from Zion National Park east boundary to Mt. Carmel Junction on route 11.

#### **Section 34. State Highways—Routes 16 to 20.**

The following named roads are designated as state highways:

(a) Route 16. From the Utah-Wyoming state line at a point 10 miles southeasterly from Woodruff northerly via Woodruff, Randolph, Sage Creek Junction, Laketown, Garden City along the west shore of Bear Lake to the Utah-Idaho state line near Fish Haven.

(b) Route 17. From Harrisburg Junction on route 1 easterly via Hurricane to LaVerkin on route 15.

(c) Route 18. From route 1 west of St. George northerly via Central and Enterprise to route 56 at Beryl Junction.

(d) Route 19. From route 56 west of Cedar City northwesterly to Lund.

(e) Route 20. From 14 miles north of Paragonah on route 1 easterly to Orton on route 11.

#### **Section 35. State Highways—Routes 21 to 25.**

The following named roads are designated as state highways:

(a) Route 21. From Beaver on route 1 westerly via Milford and Garrison to the Utah-Nevada state line.

(b) Route 22. From 2 miles south of Junction City on route 11 via Antimony and Widtsoe to Tropic Junction on route 12.

(c) Route 23. From route 85 south of Wellsville northerly via Wellsville, Mendon, Petersboro, Newton and Cornish to the Utah-Idaho state line near Weston, Idaho.

(d) Route 24. From route 11 via Sigurd, Fish Lake Junction, Loa and Fruita to Hanksville, thence northeasterly to route 4 west of Green River.

(e) Route 24-A. From route 24 in Sigurd southwesterly to route 11.

(f) Route 25. From Fish Lake Junction on route 24 northerly to Fish Lake ranger station.

#### **Section 36. State Highways—Routes 26 to 30.**

The following named roads are designated as state highways:

(a) Route 26. From Holden on route 1 northwesterly via Harding to Delta, thence northerly via Lynndyl and Tintic Junction to Eureka, thence easterly via Elberta, Goshen and Santaquin to route 1.

(b) Route 26-A. From Santaquin on route 26 southerly to route 1.

(c) Route 27. From the Utah-Nevada state line easterly via Hinckley and Delta to route 26.

(d) Route 28. From Gunnison on route 11 northerly to Levan on route 1.

(e) Route 29. From Ephraim on route 11 easterly via Orangeville Junction to Castle Dale Junction on route 10.

(f) Route 30. From Fountain Green on route 11 southerly via Freedom, Wales and Chester to Spring City, thence northeasterly to route 32.

**Section 37. State Highways—Routes 31 to 35.**

The following named roads are designated as state highways:

(a) Route 31. From Fairview on route 32 southeasterly to Huntington on route 10.

(b) Route 32. From Pigeon Hollow on route 11 northerly via Mt. Pleasant and Fairview to Thistle on route 8.

(c) Route 33. From Castlegate on route 8 northeasterly to Duchesne on route 6.

(d)

(e) Route 35. From Wanship on route 2 via Peoa, Kamas and Tabor to Duchesne on route 6.

**Section 38. State Highways—Routes 36 to 40.**

The following named roads are designated as state highways:

(a) Route 36. From Tintic Junction on route 26 via Vernon, St. John Station, Stockton and Tooele to Mills Junction on route 2.

(b) Route 37. From Sunset on route 1, thence west to South Hooper, thence northerly to Hooper via Kaneshville, thence easterly to Hooper Junction on route 38.

(c) Route 38. From Nyes Corner on route 84, easterly via Hooper Junction and Twenty-fourth Street to route 1 in Ogden.

(d) Route 39. From route 1 in Ogden on Twenty-fourth Street easterly via Ogden Canyon, Huntsville to Woodruff on route 16.

(e) Route 40. From Kaneshville on route 37 northerly to Plain City.

**Section 39. State Highways—Routes 42 to 45.**

The following named roads are designated as state highways:

(a)

(b) Route 42. From the Utah-Idaho state line near Strevell, Idaho, easterly to Snowville on route 3.

(c) Route 43. From the Utah-Wyoming state line about six and one-half miles west of Manila easterly via Manila to the Utah-Wyoming state line about three miles east of Manila.

(d) Route 44. From Vernal on route 6 northerly via Dead Lake and Hope Creek to Manila on route 43.

(e) Route 45. From the Utah-Colorado state line northerly via Bonanza to route 6 at Powder Springs Wash east of Vernal.

**Section 40. State Highways—Routes 46 to 50.**

The following named roads are designated as state highways:

(a) Route 46. From LaSal Junction on route 9 easterly via LaSal to the Utah-Colorado state line.

(b) Route 47. From the Utah-Arizona state line northerly via Mexican Hat, Bluff and Blanding to Monticello on route 9.

(c) Route 48. From the north city limits of Bingham, via Coperton to Midvale Junction on route 1.

(d) Route 49. From Lagoon on route 1 northerly via Fruit Heights to Kendall Junction on route 3.

(e) Route 49-A. From Uintah Junction on route 49 northeasterly to route 3 near the mouth of Weber Canyon.

(f) Route 50. From route 122 east to Hiawatha thence northerly to Wattis.

#### **Section 41. State Highways—Routes 51 to 55.**

The following named roads are designated as state highways:

(a) Route 51. From Sage Creek Junction on route 16 easterly to the Utah-Wyoming state line.

(b) Route 52. From a connection with FAI 15 (SR 1) easterly to Olmstead on route 7.

(c) Route 53. From route 8 at Wellington northerly to route 6 west of Myton.

(d) Route 54. From Tropic Junction on route 12 via Tropic, Cannonville, Henrieville and Escalante to Boulder.

(e) Route 55. From Cedar Breaks Junction on route 14 to the south boundary of Cedar Breaks National Monument.

#### **Section 42. State Highways—Routes 56 to 60.**

The following named roads are designated as state highways:

(a) Route 56. From the Utah-Nevada state line easterly via Modena, Newcastle and Iron Mountain to Cedar City on route 1.

(b) Route 57. From route 10 northerly via Orangeville to Orangeville Junction on route 29.

(c)

(d) Route 59. From the Utah-Arizona state line northwesterly to Hurricane on route 17.

(e) Route 60. From Riverdale Junction on route 1 easterly to route 49.

#### **Section 43. State Highways—Routes 61 to 65.**

The following named roads are designated as state highways:

(a) Route 61. From Cornish on route 23 easterly via Lewiston to route 85 near Webster Spur.

(b) Route 62. From Plateau Junction on route 24 via Koosharem to route 22 near Otter Creek Reservoir, with a spur connection to Burrville.

(c) Route 63. From Salina on route 11 northwesterly via Scipio to route 1.

(d) Route 63-A. From Scipio on route 63 north to route 1.

(e) Route 64. From the Utah-Arizona state line northerly to St. George on route 1 via 700 East Street.

(f) Route 65. From Salt Lake City on route 186 easterly via Emigration Canyon along the route designated as the Brigham Memorial Highway to Henefer on route 3, and including roads at This is The Place Monument.

#### **Section 44. State Highways—Routes 66 to 70.**

The following named roads are designated as state highways:

(a) Route 66. From Porterville via Morgan to route 3 near Morgan.

(b) Route 67. From route 64 east via 300 South Street to 1000 East Street; thence north via 1000 East Street to 100 South Street; thence



west via 100 South Street to route 64 at 700 East Street in St. George.

(c) Route 68. From a junction with route 26 between Elberta and Goshen northerly via the west side of Utah Lake, Camp Williams and Redwood Road, to junction with route 1 on Fifth South Street in Bountiful.

(d) Route 69. From Brigham on route 84 northerly via Collinston to Beaver Dam Summit thence easterly to Logan on route 85.

(e) Route 70. From the Utah-Nevada state line northeasterly via Park Valley to route 42 between Snowville and Strevell, Idaho.

#### **Section 45. State Highways—Routes 71 to 75.**

The following named roads are designated as state highways:

(a) Route 71. From route 111 near Draper, northerly via Seventh and Ninth East Streets to route 181 at Seventh East and South Temple Streets in Salt Lake City.

(b) Route 72. From Loa on route 24 via Fremont northerly to Fremont Junction on route 4.

(c) Route 73. From route 36 northeast of St. John Station southeasterly via Chemical Storage Depot to Five Mile Pass thence northeasterly via Fairfield and Cedar Fort to route 1 in Lehi.

(d) Route 74. From American Fork on route 1 northerly to Alpine.

(e) Route 75. From the interchange with FAI 15 northwest of Springville easterly to route 1 near Ironton.

#### **Section 46. State Highways—Routes 77 to 80.**

The following named roads are designated as state highways:

(a)

(b) Route 77. From the interchange with FAI 15 west of Springville east via Fourth South Street to route 1 in Springville.

(c) Route 78. From Orem on route 1 easterly to Edgemont on route 7.

(d) Route 79. From route 38 easterly via Thirty-first Street and Patterson Street in Ogden to route 1.

(e) Route 80. From route 1 near Point of the Mountain east via American Fork Canyon and Alpine to route 7 in Provo Canyon.

#### **Section 47. State Highways—Routes 81 to 85.**

The following named roads are designated as state highways:

(a) Route 81. From route FAI 15 (SR 1) north of Riverside east to Fielding, thence south to route 154.

(b) Route 82. From Tremonton on route 3 north to Garland, thence easterly to route 84.

(c) Route 83. From Corinne on route 84 westerly to Lampo Junction, thence northerly via Thiokol to the Howell Interchange on route 3.

(d) Route 84. From route 1 in Roy northerly via Hot Springs, Willard, Perry, Brigham City, Corinne, Bear River City, Elwood Haws Corner, Riverside, thence east to FAI 15 (SR 1).

(e) Route 85. From FAI 15 (SR 1) south of Brigham Interchange thence easterly via Brigham Canyon, Mantua, Wellsville, Logan, Smithfield and Richmond to the Utah-State line near Franklin, Idaho.

**Section 48. State Highways—Routes 86 to 90.**

The following named roads are designated as state highways:

(a) Route 86. From route 6 one and one tenth miles southeast of Bridgeland, northerly via Bridgeland, Upalco, and Mt. Emmons to Altonah.

(b) Route 87. From Upalco on route 86 easterly via Ioka to route 6.

(c) Route 88. From Ft. Duchesne on route 6 southerly 5 miles thence easterly via Randlett to Leota, thence southerly to Ouray.

(d)

(e) Route 90. From Portage easterly to interchange FAI 15 (SR 1).

**Section 49. State Highways—Routes 91 to 95.**

The following named roads are designated as state highways:

(a) Route 91. From Fairview on route 32 northerly seven and one-half miles to Milburn.

(b) Route 92. From route 155 easterly to Elmo.

(c) Route 93. From FAI 15 (SR 1) interchange at Sixty-five hundred South Street, which is located along the south city limits of Woods Cross, one mile south of Bountiful, to route 106.

(d) Route 94. From Thompson on route 4 northerly to Segoe.

(e) Route 95. From Blanding on route 47 westerly near Natural Bridge National Monument to a crossing near the confluence of the Fremont and Colorado Rivers, thence northerly to route 24 at Hanks-ville.

**Section 50. State Highways—Routes 96 to 100.**

The following named roads are designated as state highways:

(a) Route 96. From Clear Creek via Scofield to route 8 near Colton.

(b) Route 97. From the south city limits of Park City northwest-erly to route 248 at Park City Junction.

(c) Route 98. From route 56 between Newcastle and Modena northerly to Beryl.

(d) Route 99. From Delta on route 27 northerly and westerly to Sugarville.

(e) Route 100. From Flowell easterly to route 1 at Fillmore.

**Section 51. State Highways—Routes 101 to 105.**

The following named roads are designated as state highways:

(a) Route 101. From Wellsville on route 23 easterly to Hyrum thence northerly to route 85 in Logan.

(b) Route 102. From Haws Corner on route 84 easterly to Dewey-ville on route 69.

(c) Route 103. From route 3 interchange near Uintah northerly via Harrison Avenue in Ogden to route 39 near the mouth of Ogden Canyon.

(d) Route 104. From route 84 easterly via Wilson Lane to route 38 in Ogden.

(e) Route 105. From Spanish Fork on Route 1 easterly to Moark Junction on route 8.

**Section 52. State Highways—Routes 106 to 110.**

The following named roads are designated as state highways:

(a) Route 106. From Beck Street Interchange on FAI 15 (SR 1) northerly via North Salt Lake, Parkin Overpass and Second West Street and Fourth North Street in Bountiful, thence northerly via Centerville, Farmington and Kaysville to FAI 15 (SR 1) interchange at the south limits of Layton.

(b) Route 107. From local road west of West Point easterly via West Point to FAI 15 (CR 1) north of Clearfield.

(c) Route 108. From Layton on route 232 west to Syracuse, thence north into Weber County, thence northeasterly to route 37.

(d) Route 109. From a point four miles west of Layton easterly to Layton on route 1.

(e) Route 110. From a point two miles west of Kaysville east to route 106 in Kaysville, thence easterly to route 49.

**Section 53. State Highways—Routes 111 to 115.**

The following named roads are designated as state highways:

(a) Route 111. From route 201 north of Magna southeasterly via Bacchus, Lark, Herriman and Riverton to Draper.

(b) Route 112. From Tooele on route 36 northwesterly to Grantsville on route 2.

(c) Route 113. From route 7 in Charleston northerly to Midway, thence easterly to route 6 in Heber.

(d) Route 114. From the State Hospital in Provo westerly via Center Street to Vineyard Road, thence northerly via Lakeview, Vineyard and Geneva to route 1 south of Pleasant Grove.

(e) Route 115. From route 1 in Payson northerly to Benjamin, thence easterly to route 1 in Spanish Fork.

**Section 54. State Highways—Routes 116 to 120.**

The following named roads are designated as state highways:

(a) Route 116. From the forks of Maple Canyon southeasterly to Freedom on route 30, thence easterly to route 11 in Moroni, thence easterly to route 32 in Mt. Pleasant.

(b) Route 117. From route 24 east of Bicknell southerly via Teasdale and Grover to Boulder.

(c) Route 118. From route 11 in Joseph easterly to Monroe, thence north to route 258 between Central and Elsinore.

(d) Route 119. From Richfield on route 11 easterly to route 24 at Kings Meadow Canyon.

(e) Route 120. From the Utah-Nevada state line easterly via Terry's Ranch to route 18 in Enterprise.

**Section 55. State Highways—Routes 121 to 125.**

The following named roads are designated as state highways:

(a) Route 121. From Roosevelt on route 6 northerly to Neola, thence easterly via Lapoint to and across Gerber Ditch Bridge.

(b) Route 122. From Hiawatha easterly to route 10 near Carbon-Emery county line

(c) Route 123. From Sunnyside Junction on route 8 easterly to Sunnyside.

(d) Route 124. From Horse Creek coal mine northerly via Columbia to route 123.

(e) Route 125. From route 26 east of Delta, easterly to Oak City, thence northerly to route 26 near Leamington.

**Section 56. State Highways—Routes 126 to 130.**

The following named roads are designated as state highways:

(a) Route 126. From Greenville northerly to route 21 west of Beaver.

(b)

(c) Route 128. From Moab on route 9 northeasterly along south bank of Colorado River to Dewey, thence northerly to Cisco on route 4.

(d) Route 129. From route 21 westerly along township line to southwest corner of section 31, Township 28 South, Range 10 West; thence northerly along section line four and one-half miles to route 21 east of railroad crossing at Milford.

(e) Route 130. From Minersville northerly four tenths mile to route 21.

**Section 57. State Highways—Routes 131 to 135.**

The following named roads are designated as state highways:

(a) Route 131. From route 1 northerly to West Bountiful, thence easterly to route 106 in Bountiful.

(b) Route 132. From route 26 in Lynndyl northeasterly to route 1 in Nephi.

(c) Route 133. From Coalville on route 2 via Pineview to the Utah-Wyoming state line.

(d) Route 134. From route 35 six miles north of Duchesne via Mountain Home to United States Indian Reservation boundary.

(e) Route 135. From route 125 in Oak City easterly to the forest boundary.

**Section 58. State Highways—Routes 136 to 140.**

The following named roads are designated as state highways:

(a) Route 136. From route 259 east of Kanab northerly via Johnson Canyon and Alton to route 11 at Alton Junction.

(b) Route 137. From route 11 in Gunnison easterly to Mayfield, thence northerly to route 11.

(c)

(d) Route 139. From Consumers easterly to route 8 near Spring Glen.

(e) Route 140. From route 27 east of Hinckley southerly to Desert, thence easterly via Oasis to route 26 in Harding.

**Section 59. State Highways—Routes 141 to 145.**

The following named roads are designated as state highways:

(a) Route 141. From Hatton easterly to route 1 between Meadow and Kanosh.

(b) Route 142. From route 23 at Newton to Clarkston, at Junction of route 170.

(c) Route 143. From the north boundary of Cedar Breaks Na-

tional Monument northerly via Parowan Canyon to route 1 in Parowan.

(d) Route 144. From forest boundary easterly via New Harmony to route 1 near Washington-Iron County line.

(e) Route 145. From Laketown on route 16 southerly to Meadowville and including a loop via Round Valley.

#### **Section 60. State Highways—Routes 146 to 150.**

The following named roads are designated as state highways:

(a) Route 146. From route 1 at Pleasant Grove northerly to route 80 near the mouth of American Fork Canyon.

(b) Route 147. From route 1 at Payson westerly to McBeth corner thence northerly four miles, thence east approximately three miles to Benjamin, thence north approximately one mile, thence easterly to route 8, thence east one mile, thence north to Mapleton on route 167.

(c) Route 148. From route 132 northwesterly to route 26 near Jericho.

(d) Route 149. From route 6 at Jensen northerly to museum in Dinosaur National Monument.

(e) Route 150. From route 35 in Kamas easterly to Mirror Lake and northerly to Utah-Wyoming state line enroute to Evanston, Wyoming.

#### **Section 61. State Highways—Routes 151 to 155.**

The following named roads are designated as state highways:

(a) Route 151. From Hailstone on route 6 easterly to Francis on route 35.

(b) Route 152. From route 181 in Salt Lake City southeasterly via Highland Drive to Seventieth South Street, thence easterly via Big Cottonwood Canyon to Brighton.

(c) Route 153. From Beaver on route 1 easterly via Puffer Lake to Junction City on route 11.

(d) Route 154. From route 84 near Garland northwesterly to Riverside Road thence easterly to Collinston on route 69.

(e) Route 155. From route 10 in Huntington northeasterly to Cleveland, thence northerly to route 10 at Washboard Junction.

#### **Section 62. State Highways—Routes 156 to 160.**

The following named roads are designated as state highways:

(a) Route 156. From route 1 in Spanish Fork north via Center Street to the interchange with FAI 15 (SR 1) north of Spanish Fork.

(b) Route 157. From route 244 (at Poplar and Main Streets in Helper) southerly and northeasterly to Kenilworth.

(c) Route 158. From Devils Slide interchange on route 3 easterly via Croyden three and seven-tenths miles.

(d) Route 159. From route 26 near Juab-Utah County line easterly via Dividend to route 26.

(e) Route 160. From FAI 15 approximately one and three-tenths miles south of Beaver to route 1.

#### **Section 63. State Highways—Routes 161 to 165.**

The following named roads are designated as state highways:

(a) Route 161. From route 1 northerly to FAI 15 approximately one mile north of Beaver.

(b) Route 162. From Eden Junction on route 39 northerly of Liberty.

(c) Route 163. From Avon northerly to route 101 in Hyrum.

(d) Route 164. From the interchange on FAI 15 southwest of Spanish Fork easterly to route 1, one-half mile south of Spanish Fork.

(e) Route 165. From the forest boundary northerly to the Utah-Wyoming state line approximately one and one-half miles east of Summit-Daggett County line.

#### **Section 64. State Highways—Routes 166 to 170.**

The following named roads are designated as state highways:

(a) Route 166. From the forest boundary northerly to route 43 west of Antelope Canal crossing.

(b) Route 167. From route 8 between Springville and Moark Junction easterly to Mapleton.

(c) Route 168. From the north entrance to Hill Air Force Base northerly to state route 60 in Riverdale.

(d) Route 169. From route 106 near Parkin Underpass northerly via Fifth West in Bountiful to route 1 near the north city limits of Bountiful.

(e) Route 170. From Clarkston on route 142 easterly via Trenton to route 85 in Richmond.

#### **Section 65. State Highways—Routes 171 to 175.**

The following named roads are designated as state highways:

(a) Route 171. From route 111 at Eighty-fourth West and Thirty-fifth South Streets easterly via Thirty-fifth South and Thirty-third South Streets to Wasatch Boulevard, thence northerly and easterly to route 2 at Stillman Bridge near the mouth of Parley's Canyon.

(b) Route 172. From route 65 in Emigration Canyon to Pinecrest.

(c)

(d) Route 174. From route 71 easterly via Forty-eighth South Street to Holladay Boulevard, thence southerly to Knudsen's Corner.

(e) Route 175. From route 1 in Ogden north via Grant Avenue and Twenty-first Street to route 1.

#### **Section 66. State Highways—Routes 176 to 180.**

The following named roads are designated as state highways:

(a) Route 176. From route 1 at Ninth South and State Streets in Salt Lake City westerly via Ninth South to Second West, thence northerly via Second West to route 2 at North Temple.

(b)

(c) Route 178. From route 36 in Tooele easterly to International Smelter.

(d) Route 179. From Bauer easterly to route 36 south of Tooele.

(e) Route 180. From the interchange on FAI 15 southwest of American Fork northerly via Fifth East Street to route 1 in American Fork.

**Section 67. State Highways—Routes 181A to 184A.**

The following named roads to and on the grounds of state institutions are designated as state highways:

(a) Route 181-A 1. University Circle: beginning at south junction of University Circle and University Street easterly, northerly, and westerly to University Street, thence south via University Street to point of beginning.

2. From University Street easterly via Fourth South Street to Fourteenth East Street, thence northerly to Third South Street, thence east via Third South Street to Campus Drive.

3. From Fifth South Street north and east via Fifteenth East Street to Wasatch Drive, thence southeast via Wasatch Drive to Campus Drive, thence southwesterly, northwesterly and west via Campus Drive to Fifteenth East Street.

4. From Wasatch Drive southeasterly via Fort Douglas Boulevard to Gibbon Street, thence east via Gibbon Street to Connor Road.

(b) Route 182-A. From route 8 in Price north to Carbon Junior College.

(c) Route 183-A. From route 1 in Ogden east via Seventh Street to the Utah State Tuberculosis Sanatorium.

(d) Route 184-A. Weber Junior College on route 39 in Ogden.

**Section 68. State Highways—Routes 181 to 185.**

The following named roads to state institutions, including the principal roads on the grounds of the institutions named, are designated as state highways:

(a) Route 181. From route 171 at Thirty-third South Street northerly via Thirteenth East Street to South Temple Street in Salt Lake City, thence westerly via South Temple to State Street.

(b) Route 182. From route 1 in Ogden east via Twentieth Street to Institute for Deaf and Blind, thence east to Harrison Boulevard.

(c) Route 183. The State Industrial School on route 235 in Ogden.

(d) Route 184. From route 1 at North Temple and State Streets in Salt Lake City northerly via State Street to the State Capitol, thence westerly via Second North and northerly via Columbus Street and Victory Road to route 1 at Beck Street.

(e) Route 185. From route 74 near American Fork east via the State Training School to route 146.

**Section 69. State Highways—Routes 186 to 190.**

The following named roads to state institutions, including the principal roads on the grounds of the institutions named, are designated as state highways:

(a) Route 186. From route 68 in Salt Lake City easterly via Fourth South, Tenth East and Fifth South Streets and the State University to route 2 near the mouth of Parley's Canyon.

(b) Route 187. The State Prison near route 1 in Salt Lake County.

(c) Route 188. The Utah State University of Agriculture and Applied Science on route 13 in Logan.

(d) Route 189. From route 11 in Ephraim easterly to Snow College.

(e) Route 190. From route 1 in Cedar City westerly to branch of the Utah State University of Agriculture and Applied Science.

**Section 70. State Highways—Routes 193 to 195.**

The following named roads are designated as state highways:

- (a)
- (b)
- (c) Route 193. From Clearfield on route 1 east via south entrance to Hill Field to route 49.
- (d) Route 194. From route 11 at Fifth South Street in Richfield easterly and northerly via Fifth South and First East Streets to route 11.
- (e) Route 195. From route 2 in Salt Lake City north via Twenty-third East Street to route 186.

**Section 71. State Highways—Routes 196 to 200.**

The following named roads are designated as state highways:

- (a) Route 196. From route 6 near the Summit-Wasatch County line north-easterly to Peoa on route 35.
- (b) Route 197. From route 73 northerly via Fifth West Street to route 1 in Lehi.
- (c) Route 198. From the north entrance of Chemical Storage Depot north to route 73.
- (d) Route 199. From route 86 east of Altamont easterly to Bluebell thence south to route 86 near Upalco.
- (e) Route 200. From route 61, approximately three miles west of route 1, north to the Utah-Idaho state line.

**Section 72. State Highways—Routes 201 to 204.**

The following named roads are designated as state highways:

- (a) Route 201. From route 2 at Lake Point Junction east via Twenty-first South Street through Salt Lake City to route 2 near the mouth of Parley's Canyon.
- (b) Route 202. From route 171 northerly via Main Street to route 201 in Salt Lake City.
- (c) Route 203. From the Army Supply Depot east on Second Street to Harrison Boulevard in Ogden.
- (d) Route 204. From route 1 north via Wall Avenue in Ogden to route 1.
- (e)

**Section 73. State Highways—Routes 206 to 210.**

The following named roads are designated as state highways:

- (a) Route 206. From route 109 north to south entrance of Naval Supply Depot.
- (b) Route 207. From Rainbow northeasterly to route 45 in Watson.
- (c) Route 208. From route 6 approximately six miles east of Fruitland northerly to route 35 near Tabiona.
- (d) Route 209. From route 88 approximately three miles west of Leota, thence northerly to route 6.
- (e) Route 210. From route 152 at Seventieth South Street south-easterly via Twentieth East Street and Little Cottonwood Canyon to Alta.



**Section 74. State Highways—Routes 212 to 214.**

The following named roads are designated as state highways:

- (a)
- (b) Route 212. From route 64 easterly via Washington Fields, thence to the Virgin River, thence northerly to route 1 in Washington Town.
- (c) Route 213. From route 35 in Oakley easterly along the Weber River to the Pines approximately 12 miles.
- (d) Route 214. From route 105 at a point east of Spanish Fork east city limits northwesterly to a junction with route 1 (FAI 15) north of Spanish Fork.
- (e)

**Section 75. State Highways—Routes 216 to 219.**

The following named roads are designated as state highways:

- (a) Route 216. From route 53 near Myton southeasterly about seven miles to Castle Peak Gilsonite mines.
- (b) Route 217. From Benson Ward L.D.S. Church easterly via Logan Airport to route 85 southerly two miles north of north city limits of Logan.
- (c) Route 218. From route 23 east of Newton easterly to route 85 in Smithfield.
- (d) Route 219. From the junction with the roads to Milton and Richville easterly via the high school, thence northerly across Weber River to the post office on the main street of Morgan.

**Section 76. State Highways—Routes 221 to 224.**

The following named roads are designated as state highways:

- (a) Route 221. From route 134 south of Mountain Home easterly via Bonita to route 86 at Altamont.
- (b) Route 222. From route 7 southeasterly to Wallsburg.
- (c) Route 223. From route 6 northwesterly and northeasterly to Keetley, thence easterly to route 6 at Keetley Junction.
- (d) Route 224. From the State Park boundary via Schneitter's Hot Pots southeasterly to route 113 in Midway.
- (e)

**Section 77. State Highways—Routes 226 to 230.**

The following named roads are designated as state highways:

- (a) Route 226. From Mt. Ogden northeasterly to route 39 near Huntsville.
- (b)
- (c) Route 228. From route 115 at Benjamin north via Barney Corner, thence southeasterly via Palmyra to route 147 about one and one-half miles west of route 1 in Spanish Fork.
- (d) Route 229. From Alta on route 210 to Brighton on route 152.
- (e) Route 230. From route 204 east on Thirty-sixth Street to Harrison Avenue in Ogden.

**Section 78. State Highways—Routes 232 to 235.**

- (a)

(b) Route 232. From route 1 in Layton north to route 193 at the south entrance to Hill Field.

(c) Route 233. From route 1 in Pleasant Grove north via Main Street, thence northwesterly to route 1.

(d) Route 234. From route 1 in Payson east via Eighth South Street, thence north via Main Street to route 1.

(e) Route 235. From route 1 in Ogden north to North Ogden, thence northwesterly via Pleasant View to route 1 near the Box Elder-Weber County line.

#### **Section 79. State Highways—Routes 236 to 241.**

The following named roads are designated as state highways:

(a) Route 236. From route 10 north of Huntington northerly to route 122 in Hiawatha.

(b)

(c)

(d) Route 239. From route 2 in Parley's Canyon northerly to route 65.

(e)

(f) Route 241. From route 35 at Woodland southeasterly on south side of Provo River to route 35 near Stewart's Ranch.

#### **Section 80. State Highways—Routes 242 to 246.**

The following named roads are designated as state highways:

(a) Route 242. From Hyrum on route 101 easterly via Blacksmith Fork approximately 17 miles to the ranch house on the State Fish and Game property known as the Hardware Ranch.

(b) Route 243. From route 13 in Logan Canyon easterly to Beaver Mountain.

(c) Route 244. From route 8 in Helper easterly via Poplar Street to Main Street, thence northerly via Main Street to route 8.

(d) Route 245. From Vernal on route 6 westerly via Maeser to and across High Line Canal Bridge.

(e) Route 246. From approximately one mile west of Gusher on route 6 northerly to Lapoint on route 121, thence from route 121 two and five-tenths miles west of Lapoint northerly three and eight-tenths miles to Tridell.

#### **Section 81. State Highways—Routes 247 to 251.**

The following named roads are designated as state highways:

(a) Route 247. From route 114 at Geneva east via Fourth North Street to route 1 in Orem.

(b) Route 248. From Kimball Junction on route 2 via Park City Junction to route 6 near the Wasatch-Summit County Line, approximately four miles southeasterly from Silver Creek Junction.

(c) Route 249. From junction with route 68 easterly to junction with route 1 near Beck's Hot Springs.

(d) Route 250. From route 24 north to route 72 approximately one mile east of Loa.

(e) Route 251. From route 85 west of Mantua easterly and northerly through Mantua to route 85.

**Section 82. State Highways—Routes 252 to 256.**

The following named roads are designated as state highways:

- (a) Route 252. From route 6 west of Myton via Myton Main Street to route 6.
- (b) Route 253. From Deseret Mound easterly to a junction on route 56 approximately six miles west of Cedar City.
- (c) Route 254. From a point on route 253, approximately two miles west of junction with route 56, northerly to Iron Springs.
- (d) Route 255. From a point on route 106 at North Salt Lake, northerly on road commonly known as Orchard Drive via Bountiful and Centerville and thence westerly to route 106.
- (e) Route 256. From route 11 northerly via Aurora to route 63 approximately three and five-tenths miles west of Salina.

**Section 83. State Highways—Routes 257 to 261.**

The following named roads are designated as state highways:

- (a) Route 257. From route 21 at Milford northeasterly via Black Rock to route 140 in Deseret.
- (b) Route 258. From Elsinore on route 11 northerly via Central to route 11.
- (c) Route 259. From Kanab on route 11 easterly to the Utah-Arizona state line enroute to Glen Canyon Dam.
- (d) Route 260. From route 44 near Greendale northerly via Flaming Gorge Dam to the Utah-Wyoming state line near Spring Creek Gap.
- (e) Route 261. From route 47 four miles north of Mexican Hat northerly to route 95 six miles east of Natural Bridges National Monument.

**Section 84. State Highways—Routes 262 to 266.**

The following named roads are designated as state highways:

- (a) Route 262. From a point on route 47 approximately eleven miles north of Bluff easterly and southerly to the Aneth Oil Field.
- (b) Route 263. From two blocks east of Glenwood City Center west and north to route 119.
- (c) Route 264. From the Red Wash Oil Field Housing Development, northerly to route 6 near Jensen.
- (d) Route 265. From FAI 15 near Twelfth South Street in Orem, easterly to a junction with route 1.
- (e) Route 266. From route 68 on Forty-seventh South Street northeasterly and easterly to route 71 at Forty-fifth South Street.

**Section 85. State Highways—Routes 267 to 280.**

- (a) Route 267. From route 1 in Provo easterly via Columbia Drive (1230 North Street) to University Street.
- (b) Route 268. From a connection with FAI 15, easterly via Fifth North Street in Salt Lake City to route 1.
- (c) Route 269. From a connection with FAI 15, easterly via Sixth South Street to First West Street in Salt Lake City, providing one-way eastbound traffic; and from another connection with FAI 15 easterly via Fifth South Street in Salt Lake City to route 176, providing one-way eastbound traffic.

(d) Route 270. From a connection with FAI 15, north and easterly to route 176 at West Temple Street in Salt Lake City.

(e) Route 278. From Dead Horse Point easterly to route 279 near Day Canyon.

(f) Route 279. From the Potash Plant north along the Colorado River to route 9 north of Moab.

(g) Route 280. From FAI 80 near the south limits of Coalville easterly to route 2.

#### **Section 86. Jurisdiction Over Interstate Highways Within Cities and Towns.**

The commission shall have complete jurisdiction and control over the entire right-of-way of interstate highways within cities and towns and shall be responsible for the construction, maintenance and regulation of such highways.

#### **Section 87. Widening State Highways Within Cities and Towns.**

The commission is authorized to widen or improve streets which have been designated as state highways within cities and towns.

#### **Section 88. Division of Responsibility Over State Highways Within Cities and Towns.**

The jurisdiction and responsibility of the state road commission and the cities and towns with respect to streets designated as state highways within cities and towns, other than interstate highways, shall be as follows:

(1) The state road commission shall have jurisdiction over and shall be responsible for the construction and maintenance of the portion of any such highway located between the back of the curb on either side of the highway, or, if there is no curb, the commission shall have jurisdiction over and shall be responsible for the construction and maintenance of the traveled way, its contiguous shoulders and appurtenances. Cities and towns shall have jurisdiction over all other portions of the right-of-way and shall be responsible for its construction and maintenance; provided, that whenever a city or town grants permission for the installation of any pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the portion of the right-of-way under its jurisdiction, such permission shall contain the condition that any such installation shall be removed from the right-of-way at the request of the city or town, and the city or town shall cause any such installation to be removed at the request of the state road commission when the commission deems the installation to be a hazard to traffic safety or its removal is necessary for the construction and maintenance of the highway or to meet the requirements of federal regulations. Whenever it is necessary that utility facilities, as defined in section 11 of this act, be relocated on federal-aid highways, reimbursement shall be made for such relocation as provided for in section 11 of this act.

(2) The state road commission shall construct curbs, gutters and on such highways when it is deemed necessary by the commission for the proper control of traffic, driveway entrances, or drainage. Whenever any such highway is widened or altered and existing curbs, gut-

ters and sidewalks are removed, the commission shall replace such curbs, gutters and sidewalks.

(3) The state road commission may furnish and install lighting systems for such highways, but their operation and maintenance shall be the responsibility of the city or town.

(4) If new storm sewer facilities are necessary in the construction and maintenance of such highways, the cost of such facilities shall be borne by the state and the city or town in such proportion as may be mutually agreed upon between the state road commission and the highway authorities of the city or town.

(5) The state road commission is authorized to regulate the location and construction of approach roads and driveways entering upon any such highway, but the commission may delegate the administration of such regulations to the highway authorities of the city or town.

#### **Section 89. Public Use Constituting Dedication.**

A highway shall be deemed to have been dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of ten years.

#### **Section 90. Highways Once Established Continue Until Abandoned.**

All public highways once established shall continue to be highways until abandoned or vacated by order of the highway authorities having jurisdiction over any such highway, or by other competent authority.

#### **Section 91. Toll Roads and Bridges.**

Whenever the franchise of any toll bridge or road expires by limitation, forfeiture or nonuser the same becomes a free public highway, and no claim shall be valid against the public for right-of-way or for land material comprising such bridge or road.

#### **Section 92. United States Patents—Patentee and County to Assert Claims to Roads Crossing Land.**

Whenever any person shall acquire title from the United States to any land in this state over which there shall at the time extend any public highway that shall not theretofore have been duly platted, and that shall not have been continuously used as such for a period of ten years theretofore, he shall within three months after receipt of his patent assert his claim for damages in writing to the board of commissioners of the county in which the land is situated; and said board shall have an additional period of three months in which to begin proceedings to condemn the land according to law. Such highway shall continue open as a public highway during said periods; but in case no action is begun by the board of county commissioners within the period above stated, such highway shall be deemed to be abandoned by the public. In case of a failure by such person so acquiring title to public lands to assert his claim for damage as aforesaid for three months from the time he shall have received a patent to such lands, he shall thereafter be barred from asserting or recovering any damages by reason of such public highway, and the same shall remain open.

**Section 93. Width of Highways.**

The width of rights-of-way for public highways shall be such as the highway authorities of the state, counties, cities or towns may determine for such highways under their respective jurisdiction.

**Section 94. City or County Contributing to Road Commission.**

Counties, cities and towns are authorized to contribute real or personal property to the state road commission for state highway purposes.

**Section 95. Acquisition of Personal Property.**

The commission may acquire by gift, agreement, exchange, purchase, or otherwise such machinery, tools, equipment, materials, supplies or other personal property as is necessary for the administration, construction, maintenance and operation of the state highways, and may sell, exchange or otherwise dispose of such machinery, tools, equipment, materials, supplies and other personal property when no longer suitable or required for such purposes. Such personal property as is required by law to be procured or disposed of through the department of finance shall be so disposed of or procured.

**Section 96. Acquisition of Rights-of-Way and Other Real Property.**

The commission is authorized to acquire any real property or interests therein, deemed necessary for temporary, present, or reasonable future state highway purposes by gift, agreement, exchange, purchase, condemnation, or otherwise. Highway purposes as used in this section or otherwise in this act shall include, but shall not be limited to the following:

- (1) Rights-of-way, including those necessary for state highways within cities and towns.
- (2) The construction, reconstruction, relocation, improvement and maintenance of the state highways and such other highways, roads and streets as may be under the control of the commission.
- (3) Limited access facilities, including rights of access, air, light and view, and frontage and service roads to highways.
- (4) Adequate drainage in connection with any highway, cuts, fills, channel changes, and the maintenance thereof.
- (5) Weighing stations, shops, offices, storage buildings and yards, and road maintenance or construction sites.
- (6) Road material sites, sites for the manufacture of road materials, and access roads to such sites.
- (7) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public.
- (8) The placement of traffic signals, directional signs and other signs, fences, curbs, barriers, and obstructions for the convenience of the traveling public.
- (9) The construction and maintenance of storm sewers, sidewalks and highway illumination.
- (10) The construction and maintenance of livestock highways.
- (11) The construction and maintenance of roadside rest areas adjacent to or near any highway.

**Section 97. Disposal of Unused Rights-of-Way.**

Whenever the Commission determines that any real property or interest therein, heretofore or hereafter acquired for highway purposes, is no longer necessary for such purpose, the Commission may lease, sell, exchange or otherwise dispose of such real property or interest therein. Any such property may be sold at private or public sale and the proceeds thereof shall be turned over to the state treasurer and credited to the state road fund. In the disposition of land at any such private sale, first consideration may be given to the original grantor or his successor in interest.

**Section 98. Authority to Acquire Real Property From Political Subdivision for Exchange of Rights-of-Way.**

The commission is authorized to purchase or otherwise acquire from any county, city or other political subdivision of the state, real property or interests therein which may be exchanged for or used in the purchase of other real property or interests therein to be used in connection with the construction, maintenance or operation of state highways.

**Section 99. Authority to Acquire Uneconomic Remnants of Land.**

Whenever a part of an entire lot, block or tract of land or interests therein or improvements thereon is to be acquired by the commission and the remainder is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning damages, the commission may acquire the whole of the same and may sell the remainder or may exchange the same for other property needed for highway purposes.

**Section 100. Interim Use of Land Acquired for Future Highways.**

In cases where it is found advisable by the commission to acquire real property, interests therein or improvements thereon in advance of the actual construction, reconstruction, or improvement of highways or to acquire the same in order to save on acquisition costs or avoid the payment of excessive damages, such real property, interests therein, or improvements thereon may be leased or rented by the commission in such manner, for such periods of time, and for such sums as are determined by the commission to be in the best interest of the state. The commission may employ private agencies to manage such rental properties when it is deemed to be more economical and in the best interests of the state to so do. All moneys received for such leases and rentals, after deducting any portion to which the federal government may be entitled, shall be deposited with the state treasurer and credited to the state road fund.

**Section 101. Fee Simple Title or Lessor Interest May Be Acquired in Rights-of-Way.**

Title to real property acquired by the state road commission or the counties, cities and towns, either by gift, agreement, exchange, purchase, condemnation, or otherwise, for highway rights-of-way or other highway purposes, may be in fee simple or any lesser estate or interest. A transfer of land bounded by a public highway on a right-of-way for

which the public has only an easement passes the title of the person whose estate is transferred to the middle of the highway.

#### **Section 102. Procedure for Abandonment of Highways.**

The commission shall act to abandon any easement or to vacate any highway by resolution. A certified copy of such resolution may be recorded without acknowledgment, certification of acknowledgment, or further proof, in the office of the county recorder of each county wherein any portion of the easement to be abandoned or the highway to be vacated lies. No fee shall be charged for such recordation. On such recordation, the abandonment or vacation is complete.

When a highway for which the state holds only an easement is vacated or abandoned, or when any other easement is abandoned, the land previously subject thereto shall be free from such public easement for highway purposes. When the state owns in fee the land in which the vacated highway is located, the commission may sell, exchange, or otherwise dispose of such land in the manner provided by law.

In any proceeding for the abandonment or vacation of any state highway or part thereof, the commission may reserve and except therefrom any easements, rights or interests in such highway deemed desirable and in the best interest of the state.

#### **Section 103. Substitution of Right to Condemn When Public Property Is Taken for a Highway.**

Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state highway purposes, the commission may, with the consent of the person or agency in charge of such other public use, condemn real property to be exchanged with such person or agency for the real property to be taken for state highway purposes. This section does not limit the authorization to the commission to acquire, other than by condemnation, property for such purposes.

#### **Section 104. Uniform Plans and Specifications.**

The commission shall prepare and adopt uniform standard plans and specifications for the construction and maintenance of state highways, and shall issue a manual containing such plans and specifications for the information and guidance of officials having supervision of such work.

#### **Section 105. Furnishing Plans and Specifications to Local Highway Authorities.**

The commission shall furnish plans, specifications and estimates for culverts and bridges and for road construction, together with such necessary information with respect thereto as may be desired by local highway authorities for use on county roads, and city streets on such terms as may mutually be agreed upon.

#### **Section 106. Highways In Cities and Towns to Conform to Grade.**

Where public highways other than interstate or defense highways extend through a city or town they shall conform to the direction and grade of other streets in the city or town unless permission is obtained



from the highway authorities of the city or town for a variance in the direction and grade.

**Section 107. Agreements With Counties, Cities and Towns for Construction and Maintenance of Highways.**

The commission is authorized to enter into contracts for the construction and maintenance of state highways, and may enter into written agreements on behalf of the state with any county, city or town for rights-of-way and the construction or maintenance of any part of the state highways at the expense of the state, or at the expense of any county, city or town, or at the joint expense of the state and any county, city or town.

**Section 108. Plans, Bids, Contracts for Highways.**

The commission shall make plans, specifications and estimates preparatory to the construction or improvement of any state highway. On such construction or improvements, not made with state prison labor, the estimated cost of which for any one project exceeds \$25,000 for labor and materials, all road work shall be performed under contract to be let to the lowest responsible bidder. The advertisement on bids for such work shall be published in a newspaper of general circulation in the county in which such work is to be performed at least once a week for two consecutive weeks, last publication to be at least ten days before bids therefor shall be opened. Sealed bids shall be received by the commission and opened at the time and place designated in the advertisement, and the contract awarded; provided, that the commission shall have the right to reject any and all bids. Where the estimates therefor are substantially lower than any responsible bid received, the commission may perform any work by force account.

**Section 109. Appurtenances on Highways.**

The commission is authorized to construct and maintain such appurtenances along the state highway system as are necessary for the public safety, welfare and information. Appurtenances shall include, but are not limited to, highway illumination, sidewalks, curbs, gutters, steps, driveways, retaining walls, fire hydrants, guard rails, storm sewers, and rest areas.

**Section 110. Restricting Use of Highway.**

Whenever it is deemed necessary because of construction or maintenance work or because of emergency to suspend all or part of the travel on a public highway or portion thereof, the highway authorities of the state, counties, cities and towns may restrict the use of, or close, such highway or portion thereof. Whenever such highway or portion thereof is so restricted or closed to travel, the highway authorities shall cause suitable barriers and notices to be posted at the point where and detour road takes off from such closed or restricted highway and such detour road shall be clearly indicated by signs and the same shall be adequately maintained.

Any person who willfully fails to observe any barricade, warning light, sign or flagman, warning the public that a highway or portion thereof is restricted or closed to traffic, is guilty of a misdemeanor.

**Section 111. Establishment of Limited Access Highways.**

The highway authorities of the state, counties, cities, and towns, acting alone or in cooperation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, are authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions, present or future, will justify such special facilities. Said highway authorities of the state, counties, cities, and towns shall also have and may exercise, relative to limited-access facilities, any and all additional authority now or hereafter vested in them relative to highways, roads, or streets within their respective jurisdictions. Such authorities may regulate, restrict, or prohibit the use of such limited-access facilities by pedestrians, animals, or by the various classes of vehicles or traffic.

**Section 112. Power of Highway Authorities Over Limited Access Highways.**

The highway authorities of the state, counties, cities and towns are authorized to so design any limited-access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended; and its determination of such design shall be final. In this connection, such highway authorities are authorized to divide and separate any limited-access facility into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices. No person shall have any right to ingress or egress to, from or across limited-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

**Section 113. Acquisition of Property for Limited Access Highways.**

The highway authorities of the state, counties, cities, and towns may acquire private or public property and property rights for limited-access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase or condemnation in the same manner as such authorities are now or hereafter may be authorized by law to acquire such property or property rights in connection with highways, roads, and streets within their respective jurisdiction. All property rights so acquired may be in fee simple or in any lesser estate or interest. In connection with the acquisition of property or property rights for any limited-access facility or portion thereof or service road in connection therewith, the state, county, city, or town highway authority may, in its discretion, acquire an entire lot, block, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper.

**Section 114. Grade Separation and Right of Access to Limited Access Highways.**

The highway authorities of the state, county, city or town may designate and establish limited-access highways as new and additional facilities or may designate and establish an existing street or highway as included within a limited-access facility. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of limited-access facilities with existing state highways and county roads, and the city or town streets, by grade separation or service road, or by closing off such roads and streets, by grade separation or service road, or by closing off such roads and streets' at the right-of-way boundary line of such limited-access facility; and after the establishment of any limited-access facility, no highway, road or street which is not part of said facility shall intersect the same at grade. No city or town street, county road, or state highway or other public way shall be opened into or connected with any such limited-access facility without the consent and previous approval of the highway authorities of the state, county, city, or town having jurisdiction over such limited-access facility. Such consent and approval shall be given only if the public interest shall be served thereby.

**Section 115. Agreements With Political Subdivisions and Federal Government With Respect to Limited Access Highways.**

The highway authorities of the state, counties, cities and towns are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of limited-access facilities or other public ways in their respective jurisdiction, to facilitate the purposes of this act.

**Section 116. Authority With Respect to Local Service Roads and Streets in Connection With Limited Access Highways.**

In connection with the development of a limited-access facility the state, county, city, or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over limited-access facilities, if in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the limited-access facility proper by means of all devices designated as necessary or desirable by the proper authority.

**Section 117. Livestock Highways.**

The state road commission, the state board of agriculture, county commissioners, city commissioners, city councils and town boards are authorized and empowered to designate, survey, build, protect and maintain livestock highways, and to purchase rights-of-way therefor. Where state highways with heavy traffic are regularly used for the movement of livestock it shall be the duty of the state road commission,

county commissioners, city commissioners, city councils and town boards to construct and maintain livestock roads or trails for livestock travel.

**Section 118. Agreements Among Political Subdivisions and Federal Government With Respect to Livestock Highways.**

Any of such state boards or commissions, with the approval of the governor, and any such city or county boards, commissions, or councils are empowered to enter into agreements with each other, with any persons, and with the United States Government, in constructing and maintaining livestock highways.

**Section 119. Preference in Use by Livestock.**

Livestock shall have the preference in the use of such livestock roads or trails for the purpose of transfer from place to place, but shall not be permitted to use such roads or trails for pasturing purposes, except during regular transfer from place to place. Such preference shall not exclude the public from using such roads or trails when not in use by livestock.

**Section 120. Exclusive Use by Livestock.**

It shall be unlawful for any person to drive livestock upon the public highways when a livestock highway is available and can be used without undue inconvenience.

Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished by a fine of not to exceed \$100 or by imprisonment not to exceed 30 days, or by fine and imprisonment.

**Section 121. Assent to Federal Aid.**

The legislature of the state of Utah hereby assents to all the provisions of Title 23, United States Code Annotated, relating to federal-aid for highway purposes, together with all acts amendatory thereof and supplemental thereto. The state road commission is hereby authorized to enter into all contracts and agreements with the United States Government relating to the survey, construction and maintenance of roads under the provisions of the said acts, to submit such scheme or program of construction and maintenance as may be required by the appropriate federal agency, and to do all other things necessary, fully, to carry out the cooperation contemplated and provided for by the said acts. For the construction of federal-aid roads the good faith of the state is hereby pledged to make available funds sufficient to fully cooperate in such construction with the sums appropriated to the state by or under the United States Government during each and all of the years for which federal funds are appropriated, and to make adequate provision for carrying out such maintenance.

**Section 122. Selection of Federal Aid Projects.**

The state road commission is authorized and empowered with the approval of the governor to select the federal-aid road projects, and to make with the approval of the governor such disposition of federal-aid funds in the construction of state roads as by it is deemed best.

**Section 123. Use of State Funds in National Forests.**

For the survey, construction and improvement of state highways in any county, when such highways are within, or partly within, a national forest, the state road commission is authorized and empowered to use with the approval of the governor any or all of the state road funds accruing to that county by virtue of the laws of this state in cooperating with the federal government as contemplated in the Federal-aid Road Act and the rules and regulations thereunder.

**Section 124. Federal Aid—Authority of Counties.**

Counties are hereby authorized and empowered, by their commissioners, to enter into agreements with the appropriate federal agency for the use of federal funds to construct, improve, or maintain roads, other than state highways, within or partly within national forests; provided, that the share of any county in the cost of such cooperative road project shall be paid from county road funds; provided further that donations may be accepted in lieu of appropriations from county road funds.

**Section 125. Budget.**

The state road commission shall prepare and submit to the governor, to be included in his budget to be submitted to the legislature, a budget of the requirements for salaries and wages, office expense, travel, equipment and repairs necessary for the administrative departments of the state road commission for the biennium next following the convening of the legislature.

**Section 126. Budget—Transfer of Funds.**

The state auditor shall transfer from the highway fund to the state general fund the amount designated by the legislature, out of which the items budgeted shall be paid, and he shall at the close of the biennium cover into the highway fund all unexpended balances remaining in the accounts so budgeted.

**Section 127. Appropriation From Motor Vehicle Fund—Use on B and C Roads.**

There is appropriated to the state road commission from the motor vehicle registration fund annually, all money in said fund in excess of the expenses of administering the registration of motor vehicles as provided in section 41-1-141, Utah Code Annotated, 1953, for use on class B and class C roads.

**Section 128. State Road Fund—Class B and C Roads Account.**

The state auditor shall, on the first day of March of each year, transfer the amount herein appropriated from the motor vehicle registration fund to the state road fund to be distributed as follows: \$2,000,000.00 to be entered in a special account to be known as the class "B" and class "C" roads account and the balance of said fund to be distributed seventy-five percent (75%) to said class "B" and class "C" roads account and twenty-five percent (25%) to the highway construction and maintenance fund. The funds in said class "B" and class "C" roads account shall

be expended under the direction of the state road commission in such manner as the legislature shall provide.

**Section 129. Apportionment of B and C Road Funds.**

The funds made available for use upon class B and class C roads shall be apportioned among the various counties, cities and towns in the following manner: Forty-five per centum in the ratio that the mileage of class B roads within each county and class C roads within each city or town bears to the total class B and class C road mileage within the state; forty-five per centum in the ratio that the population of each county, city or town bears to the total population of the state as of the last federal census; and ten per centum in the ratio that the land area of each county, city or town bears to the total land area within the state. For the purposes of this section, the population and land area of each county means the population and land area of each county outside the corporate limits of cities and towns therein.

**Section 130. Uniform Accounting of B and C Road Funds.**

The state road commission shall issue rules and regulations providing for uniform accounting of funds to be expended upon class B and class C roads, as provided in this act, and providing for necessary control over such funds as shall be required by the federal government in order for the state to comply with the provisions of Title 23, United States Code Annotated, relating to federal-aid for highway purposes, together with all acts amendatory thereof and supplemental thereto. It shall apportion the class B and class C road funds among the counties, cities and towns in the manner provided by law, and shall cooperate with county commissioners of the various counties and the governing officials of the cities and towns in order to put into effect the intent and purpose of the laws pertaining to apportionment and use of class B and class C road funds.

**Section 131. Matching Federal Funds.**

Any funds which are hereby allocated to class B and class C roads may be used for matching federal funds for the construction of secondary roads now available or which may hereafter become available in accordance with the provisions of law.

**Section 132. Donations for Road Building.**

Gifts, bequests and donations by individuals, corporations or societies to the state for road building purposes shall become a part of the state highway fund, and shall be expended for state highway purposes. Such gifts, bequests or donations made to any county shall be expended under the direction of the county commissioners.

**Section 133. No Encroachments on Rights-of-Way Without Permission of Highway Authorities.**

Except as otherwise provided in Section 54-4-15, Utah Code Annotated, 1953, no right-of-way of any state highway, county road or city street shall be dug up or excavated and no approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character shall be

placed, constructed, or maintained within any such right-of-way except as permitted by, and in accordance with, the regulations of the highway authorities having jurisdiction over such right-of-way.

Any person who violates the provisions of this section is guilty of a misdemeanor.

#### **Section 134. Highway Authorities Authorized to Regulate Encroachments.**

Except as otherwise provided in section 54-4-15, Utah Code Annotated, 1953, the highway authorities of the state, counties, cities, and towns are authorized to adopt regulations, and may require a permit containing reasonable terms and conditions, for the crossing, digging-up, or the placement, construction, and maintenance of approach roads, driveways, structures, poles, pipelines, conduits, sewers, ditches, culverts, facilities, or any other structures or objects of any kind or character on the public highway rights-of-way under their respective jurisdiction. Said highway authorities may require a surety bond or other reasonable security which may be forfeited in the event the regulations or the conditions of a permit are breached.

The authority granted by this section shall not be exercised so as to deny reasonable ingress and egress to property adjoining a public highway except where said highway authorities have acquired such right of ingress and egress by gift, agreement, purchase, eminent domain, or otherwise or where no right of ingress or egress exists between the right-of-way and the adjoining property.

#### **Section 135. Removal of Encroachments.**

If any person, firm, or corporation places, constructs, or maintains any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the right-of-way of any state highway or county road, or city street without complying with the regulations of the highway authorities having jurisdiction over such right-of-way, said highway authorities may:

(1) Remove such installation from the right-of-way or require such person, firm, or corporation to remove the same; or,

(2) Give written notice to such person, firm, or corporation to remove such installation from the right-of-way. Such notice may be served either by personal service or by mailing the notice to the person, firm, or corporation by registered mail and posting a copy thereof on such installation for a period of ten days. If such installation is not removed within ten days after the notice is complete, said highway authorities may remove the same at the expense of the person, firm, or corporation and recover costs and expenses, and also the sum of \$10 for each day the same remained within the right-of-way after notice was complete, in an action for that purpose; or

(3) If such person, firm, or corporation disputes or denies the existence of such installation, or refuses to remove or permit its removal, said highway authorities may bring an action to abate the same as a nuisance, and if judgment is recovered by said highway authorities, there shall also be recovered, in addition to having the same abated, the

costs of action and the sum of \$10 for every day such nuisance remained within the right-of-way after notice was given for its removal in the manner provided in subsection (2) of this section.

**Section 136. Advertising Along Highways—Penalty.**

It shall be unlawful for any person to place any form of advertising upon any part of the public domain, or along any public highway within 300 feet of such highway, except within the corporate limits of a city or town, and except upon land in private ownership situated along such highway, without first receiving a permit so to do from the state road commission, if a state highway, or from the board of county commissioners, if a county road. Any person who violates any provision of this section is guilty of a misdemeanor.

**Section 137. Dump Grounds and Junk Yards Adjacent to Highways.**

For the purpose of preserving and protecting Utah's scenic beauty, cities and towns are authorized to enact such ordinances and regulations as they deem fit and proper to regulate the creation of maintenance of dump grounds and junk or salvage yards of any type within 660 feet of the right-of-way of designated state and federal highways within the jurisdictional limits of the enacting city or town. It shall be within the power of the state of Utah, by and through its road commission, to regulate the creation and maintenance of such yards within 660 feet of the right-of-way of designated federal and state highways outside the jurisdictional limits of said cities and towns, and said commission is authorized to adopt such reasonable regulations as it may deem fit and proper to accomplish such purpose.

For the purposes of this section, junk or salvage yard means any establishment having as an integral part thereof any open display, accumulation or collection of discarded, worn out or abandoned material which may or may not be put to some use or have some value, which is offered for sale or trade in whole or in part or kept for storage. Junk or salvage yards shall include but not be limited to automobile wrecking or salvage yards, war surplus yards, and yards collecting and displaying worn out machinery, equipment, appliances, and/or city or town dumps for waste material and garbage.

**Section 138. Obstructing Traffic on Roadway or Sidewalk.**

It shall be unlawful to drive or place any vehicle, animal or other thing upon or along any sidewalk except in crossing such sidewalk to or from abutting property, or to permit the same to remain on or across any sidewalk in a way to impede or obstruct the ordinary use thereof. Vehicles, building material or other similar things may be placed temporarily on public highways in such manner as not to impede, endanger, or obstruct ordinary traffic, but no such vehicles, building material or other obstructions shall be permitted to remain on any such highway contrary to instructions from the board of county commissioners, or the state road commission in the case of state highways.

**Section 139. Liability for Driving Animals on Highway Not a Livestock Highway.**

Any person who drives a herd of domestic animals over a public high-



way which is not a livestock highway as provided by law shall be liable for any damage done by such animals in destroying the banks or rolling rocks into or upon such highway. Such damage may be recovered in a civil action brought by the highway authorities having jurisdiction over such highway.

**Section 140. Limited Highways.**

Where public highways are laid out through improved lands and such lands are not protected by fences along the lines of the highways passing through them, the highway authorities having jurisdiction over such highways, may declare them to be limited highways. A notice to that effect shall be posted at each end of such limited highways, and any person who willfully drives any band or herd of domestic animals over such highways other than during the time that the abutting lands are thrown open to the public by the owners thereof for grazing purposes is guilty of a misdemeanor.

**Section 141. Escaping Water—Obstructions on Highways.**

Any person who willfully or carelessly obstructs or injures any public highway by causing or permitting flow or seepage of water, or who willfully or carelessly permits water under his control to escape in any manner so as to injure any such highway, and any person who willfully or carelessly places or leaves, or causes to be placed or left, anything upon any such highway in such a way as to obstruct travel or to endanger property or persons passing upon such highway, is guilty of a misdemeanor.

**Section 142. Injury to Trees—Penalty.**

Whoever digs up, cuts down or otherwise injures or willfully destroys any shade, ornamental or other tree, planted and standing on any public highway in conformity to law is guilty of a misdemeanor, and shall also be liable to the owner for treble the amount of damages sustained.

**Section 143. Violating Rules—Defacing Road Signs—Penalty.**

Any person willfully violating any of the rules and regulations of the state road commission as to the use of state highways or traffic thereon, or who unlawfully removes, defaces or interferes with any road sign, notice, warning or barrier, is guilty of a misdemeanor.

**Section 144. Liability for Willfully Injuring Highway or Equipment.**

Any person who by any means willfully or negligently injures or damages any public highway, highway equipment, or road sign shall be liable for such damage. Such damage may be recovered in a civil action brought by the highway authorities having jurisdiction over such highway, highway equipment, or road sign.

**Section 145. Restricted Use Because of Climatic Conditions.**

The state road commission with reference to state highways, and local authorities with reference to highways under the jurisdiction, may by resolution or ordinance, prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles, for a total period of not to exceed ninety days in any one calendar year, when op-

erated upon any highway under the jurisdiction of such authorities and for the maintenance of which they are responsible, whenever any said highway by reason of deterioration, rain, snow or other climatic conditions will be seriously damaged or destroyed, unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced. Such authorities enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until or unless such signs are erected and maintained. Such authorities may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

**Section 146. Confining, Securing and Fastening Load and Covering.**

No vehicle shall be driven on any public highway unless such vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom, except that sand or other abrasives may be dropped for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

**Section 147. Liability for Damage to Highway or Structure.**

No person shall operate on any public highway any vehicle with any load unless said load and any covering thereon is suitably fastened, secured and confined according to the nature of such load so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

Any person driving any vehicle, object or contrivance upon any public highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving or moving of such vehicle, object or contrivance or as a result of operation, driving or moving any vehicle, object or contrivance weighing in excess of the maximum weight specified by law. But authorized by a special permit issued as provided by law. Whenever such driver is not the owner of such vehicle, object or contrivance but is so operating, driving or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any damage. Such damage may be recovered in a civil action brought by the highway authorities having jurisdiction over such highway or highway structure.

**Section 148. Vehicles — Size, Weight and Load Limitations—Exceptions.**

(1). It shall be unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any public highway any vehicle of a size or weight exceeding the limitations provided by law, or any vehicle or vehicles which are not so constructed or equipped as required by law, and the maximum size and weight of vehicles so specified shall be lawful throughout the state, in

areas, on the roads and under the conditions specified by law, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted by law.

(2) The provisions of this act governing size, weight and load shall not apply to fire apparatus, road machinery, being operated at the site of maintenance or construction projects, or to implements of husbandry, including farm tractors, when required to move a short distance upon a public highway while engaged in farm operations, or to a vehicle operated under the terms of a special transportation permit issued as provided by this act.

#### **Section 149. Vehicles—Limitation as to Size, Dimension and Extension.**

No vehicle shall exceed a total outside width, including any load thereon, of 8 feet, except that the width of a farm tractor shall not exceed 9 feet, and except further that the limitations as to size of a vehicle stated in this section, shall not apply to implements of husbandry when operated under terms of section 148(2), or to highway construction and maintenance equipment being operated under section 148(2), or to vehicles operated under the terms of a special permit issued as provided in section 155.

No vehicle unladen or with load shall exceed a height of 14 feet.

No vehicle with load, excepting fire-fighting apparatus, shall exceed a length of 45 feet extreme over-all dimensions, inclusive of front and rear bumpers. A truck tractor and semitrailer shall be construed to be a combination of two vehicles.

No combination of vehicles with load when coupled together shall exceed a total of 60 feet subject to the following exceptions: Said length limitations shall not apply to vehicles operated at nighttime by a public utility when required for emergency repair of public service facilities or properties or when operated under special permit as provided in section 155, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to mark clearly the dimensions of such load.

No train of vehicles, or vehicle operated alone, shall carry any load extending more than 3 feet beyond the front thereof or more than 6 feet to the rear of the body of the vehicle.

No passenger vehicle shall carry any load beyond the line of the fenders on the left side of such vehicle nor extending more than 6 inches beyond the line of the fender on the right side thereof.

#### **Section 150. Vehicles—Towing Requirements.**

The drawbar or other connection between any two vehicles one of which is towing or drawing the other on a highway, shall not exceed 15 feet in length from one vehicle to the other, except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered. Whenever such connection consists of a chain, rope or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than 12 inches both in length and width.

No person shall operate a train of vehicles when any trailer, semi-

trailer or other vehicle being towed whips or swerves from side to side dangerously or unreasonably or fails to follow substantially in the path of the towing vehicle.

**Section 151. Vehicles—Limited Weights—Tolerance.**

(1) No vehicle or combination of vehicles having a gross weight in excess of those permitted in this section shall be driven on any highway unless the owner shall have first secured an overweight permit as provided in section 154.

No vehicle shall be driven or moved on any highway in the state with a maximum gross weight in excess of 9,500 pounds on one wheel, or in excess of 18,000 pounds on one axle.

An axle load shall be defined as the total load on all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart.

(2) Subject to the limitations in paragraph (1) no group of axles between the first and last axle of a vehicle or combination of vehicles and no vehicle or combination of vehicles shall carry a gross weight in excess of the tabular values in the following table, showing the distance in feet and the corresponding allowable weight in pounds.

The distance between axles shall be measured to the nearest foot from the center of the first axle being measured by the center of the last axle being measured. When the fraction is exactly one-half foot the next larger numbers shall be used.

Distance in feet between the first and last axle of group	Maximum load in pounds carried on any group of axles
4	33,000
5	33,000
6	33,000
7	33,000
8	36,000
9	36,000
10	43,500
11	45,000
12	48,000
13	50,000
14	52,000
15	54,000
16	54,000
17	54,000
18	56,000
19	58,000
20	62,000
21	64,000
22	65,000
23	66,000
24	66,000
25	66,000
26	66,000
27	66,000

Distance in feet between the first and last axle group	Maximum load in pounds carried on any group of axles
28	66,000
29	66,000
30	67,000
31	68,000
32	69,000
33	70,000
34	71,000
35	72,000
36	73,000
37	74,000
38	75,000
39	76,000
40	76,000
41	76,000
42	76,000
43	76,000
44	76,000
45	77,000
46	77,400
47	78,300
48	79,900
49	79,900
50	79,900
51	79,900
52	79,900
53	79,900
54	79,900

**Section 152. Adoption of Size or Weight Limitations Prescribed by Bureau of Public Roads or American Association of State Highway Officials.**

In the event the bureau of public roads or the American association of state highway officials recommend, prescribe or adopt size or weight limits, for vehicles using the national system of interstate and defense highways, which exceed in full or in any part the provisions of section 149 or 151, the Utah state road commission shall adopt size and/or weight provisions or schedules reasonably comparable to those approved or recommended by the American association of state highway officials or the bureau of public roads and shall authorize said schedules to be used by owners or operators of vehicles while said vehicles are operating on the national system of interstate and defense highways within the state of Utah.

**Section 153. Summary Powers of Police Officer—Penalties.**

(1) Any peace officer having reason to believe that the height, width, length or weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a measurement or weighing of the same. The weighing may be done either by means of portable or stationary scales, and the officer may require that such vehicle be driven to the nearest scales in the event such scales are within two miles.

(2) Whenever an officer, upon measuring or weighing a vehicle and load is above provided, determines that the height, width, length, or weight is unlawful, such officer may require the driver to stop the vehicle in a suitable place and the vehicle shall remain standing until such portion of the load is removed as may be necessary to reduce said load to such limits as permitted under this act. A material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

(3) Any driver of a vehicle who fails or refuses to stop and submit the vehicle and load to a measurement or weighing, or who fails or refuses when directed by an officer to stop the vehicle and otherwise comply with the provisions of this section shall be guilty of a misdemeanor.

(4) Any driver or owner of a vehicle who violates the provisions of sections 150, 151, and 154 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$299.00 or by imprisonment not to exceed six months or by both such fine and imprisonment.

**Section 154. Special Permits for Excessive Weight or Size—Restrictions—Fees.**

The state road commission or the highway patrol acting for the commission may, in their discretion, upon receipt of an application and good cause being shown therefor, issue an overweight permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles and load of a weight exceeding the maximum specified herein for any wheel, axle, group of axles or total gross weight upon any highway.

(1) Application for such overweight permit shall state the proposed maximum wheel loads, maximum axle loads, minimum axle spacing of each such vehicles or combination thereof, and the specific roads over which permit for operation is requested; and the application shall show whether permit is requested for a single trip or for continued operations. The road commission or the highway patrol may issue or withhold such permit at its discretion, or limit the number of trips, or establish seasonal or other time limitations within which the vehicle or vehicles described may operate on the roads indicated, or may otherwise limit the prescribed conditions of operation of such vehicle or vehicles when necessary to assure against undue damage to the road foundation, surfaces or structures, and may require such other security as may be deemed necessary to compensate for an injury to any roadway or road structure. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officers; provided no overweight permit shall be issued or shall be valid hereunder unless such vehicle is classified as special mobile

equipment or is properly registered for the weight authorized by said permit or for 75,001 pounds or over, should the gross weight authorized by said overweight permit exceed 75,000 pounds. It is a misdemeanor for any person to violate any of the terms or conditions of such overweight permit.

(2) Subject to the provisions of subsection (1) of this section, when an application for an overweight permit does not exceed the provisions of section 151 by more than 25 per cent the fee for each motor vehicle shall be:

\$3.00 for a single trip permit not to exceed 96 continuous hours.

\$12.50 for any 90 continuous days.

It is further provided that these permits may be issued by the state road commission or the highway patrol acting for the commission.

(3) It is further provided that the state road commission may at its discretion authorize overweight permits for moving unladen special mobile equipment which exceeds the provisions of section 151 by more than 25 per cent over routes approved by the state road commission.

Fees shall be:

\$12.50 for a single trip permit not to exceed 96 continuous hours.

\$25.00 for any 90 continuous days.

(4) Subject to the provisions of subsection (1) of this section, when an application for overweight permit exceeds the provisions of section 151 by more than 25 per cent and the load is not reasonably divisible and the application does not involve special mobile equipment, the single trip permit fee shall be:

1 to 10 miles	\$ 5.00
11 to 25 miles	10.00
26 to 50 miles	15.00
51 miles or more	25.00

Upon payment of a \$50.00 fee and subject to the provisions of subsection (1) of this section, the state road commission may authorize an overweight permit for each motor vehicle described in this subsection (4) for any period not to exceed 90 days providing the total gross weight does not exceed (125,000) one hundred twenty five thousand pounds.

It is further provided that permits under subsection (3) and (4) of this section shall be issued only upon authorization of the state road commission.

(5) The state road commission is hereby authorized and instructed to prepare maps, drawings and instructions for the use of the highway patrol for their guidance when issuing permits under the provisions of subsections (2), (3), and (4) of this section.

(6) For the purposes of this section "Special Mobile Equipment" is defined as follows:

Every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: ditch digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls, scrapers,

power shovels, drag lines, self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, or other vehicles designed for the transportation of persons or property.

(7) Permit fees collected under the provisions of this section, shall be credited monthly to the State Highway Construction and Maintenance Fund.

#### **Section 155. Special Transportation Permit for Vehicles of Unusual Physical Nature—Fees.**

The Utah highway patrol may in its discretion issue a special transportation permit for movement of vehicle, combination of vehicles with load, which because of its physical nature cannot be made to comply with provisions of section 149. Special transportation permits will specify restrictions and geographical areas under which operations may be accomplished for maximum safety. Such special transportation permits, other than permits for the movement of farm produce or farm machinery, shall be granted by the Utah Highway Patrol only to applicants who shall have filed with and obtained approval by the Highway Patrol of a certificate of insurance executed by an insurance company or association authorized to transact business in this state upon a form as prescribed by the Highway Patrol that there is in full force and effect a policy of insurance covering said applicant for liability against personal injury or death for any one person in an amount of not less than \$50,000.00, for any one accident in an amount of not less than \$100,000.00, and for property damage in an amount of not less than \$50,000.00; provided that carriers who have permits or certificates of convenience and necessity from the Public Service Commission covering the type of movement contemplated, and who have policies of insurance on file with the Public Service Commission of Utah as a condition of the issuance of such permits or certificates shall not be required to post additional insurance as a condition to the issuance of a permit under this section. A special transportation permit may be issued for a single operation not exceeding 96 continuous hours or multiple operations during, but not exceeding a period of 90 days. A fee of \$3.00 for each 96 hour special transportation permit or \$15.00 for each 90 day permit will be assessed.

It is further provided that the highway patrol may issue permits annually for a fee of \$25.00 for each vehicle whose width with load, or length with load does not exceed the provisions of section 149 more than 25 per cent.

During authorized operations such permit shall be carried in the vehicle or combination of which it refers, and shall be available for inspection by any peace officer. It is a misdemeanor for any person to violate any of the terms or conditions of such permit.

All fees collected from special transportation permits shall be credited monthly to the state highway construction and maintenance fund.

#### **Section 156. Regulations of Highway Patrol.**

The highway patrol is authorized to adopt such regulations as in its judgment are necessary to carry out the provisions of law regulating the size, weight and load of vehicles.



**Section 157. Compliance With Federal Size and/or Weight Standards to Qualify for Federal Aid.**

If, as a condition precedent to participation in federal-aid highway funds, federal law requires compliance with size and/or weight standards which differ from those tabulated in sections 149 and/ or 151, the state road commission shall adopt such provisions regulating vehicular size and/or weight limits as are necessary to qualify for federal grants.

**Section 158. Present Rights, Duties—Penalties in Force.**

This act does not affect rights and duties that mature, penalties that are incurred, and proceedings that are begun, before its effective date.

**Section 159. Severability Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

**Section 160. Sections Repealed.**

Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9 of Title 27, Utah Code Annotated, 1953, and all sections in said chapters as they have been amended or enacted and added by Chapters 43, 44, 45, 46 Laws of Utah 1953, Chapters 41, 42, 43, 44, 71, Laws of Utah 1955, Chapters 52, 53, 54, Laws of Utah, 1957, Chapters 21, 44, 45, 46, Laws of Utah 1959, and Chapters 56, 57, 58, 97, Laws of Utah 1961, are hereby repealed.

Approved March 19, 1963.

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## HOMESTEADS

### CHAPTER 40

S. B. No. 25

(Passed March 14, 1963. In effect May 14, 1963)

#### HOMESTEAD EXEMPTION

**An Act Amending Section 28-1-1, Utah Code Annotated 1953, Relating to Homestead Exemptions, Providing an Increase in Exemptions.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 28-1-1, Utah Code Annotated 1953, is amended to read:

**28-1-1. Homestead Exemption—Exceptions.**

A homestead consisting of lands, appurtenances and improvements, which lands may be in one or more localities, not exceeding in value with the appurtenances and improvements thereon the sum of \$4,000 for the head of the family, and the further sum of \$1,500 for the spouse, and \$600 for each other member of the family, shall be exempt from judgment lien and from execution of forced sale, except upon the following obligations: (1) taxes accruing and levied thereon; and (2) judgments obtained in debts secured by lawful mortgage on the premises and on debts created for the purchase price thereof.

Approved March 18, 1963.

## HUSBAND AND WIFE

### CHAPTER 41

S. B. No. 88

(Passed February 15, 1963. In effect May 14, 1963)

#### VALIDATING PROHIBITED MARRIAGES

##### **An Act Validating Marriages to a Person Subject to Chronic Epileptic Fits Who Had Not Been Sterilized.**

*Be it enacted by the Legislature of the State of Utah:*

##### **Section 1. Validating Prohibited Marriages.**

All marriages, otherwise valid and legal, contracted prior to the effective date of this act, to which either party was subject to chronic epileptic fits and who had not been sterilized, as provided by law, are hereby validated and legalized in all respects as though such marriages had been duly and legally contracted in the first instance.

Approved February 15, 1963.

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### CHAPTER 42

S. B. No. 3

(Passed February 1, 1963. In effect May 14, 1963)

#### PROHIBITED MARRIAGES

##### **An Act Amending Section 30-1-2, Utah Code Annotated 1953, Relating to Marriages Prohibited and Void; Providing That Epileptics May Marry.**

*Be it enacted by the Legislature of the State of Utah:*

##### **Section 1. Section Amended.**

Section 30-1-2, Utah Code Annotated 1953, is amended to read:

##### **30-1-2. Marriages Prohibited and Void.**

The following marriages are prohibited and declared void:

(1) With an idiot or lunatic, with a person afflicted with syphillis or gonorrhoea that is communicable or that may become communicable.

(2) When there is a husband or wife living from whom the person marrying has not been divorced.

(3) When not solemnized by an authorized person, except as provided in section 30-1-5.

(4) When at the time of marriage the male is under sixteen or the female is under fourteen years of age.

(5) Between a negro and a white person.

(6) Between a Mongolian, member of the Malay race or a mulatto, quadroon, or octoroon, and a white person.

(7) Between a divorced person and any person other than the one from whom the divorce was secured until the divorce decree becomes absolute, and, if an appeal is taken, until after the affirmance of the decree.

Approved February 6, 1963.

**CHAPTER 43**

S. B. No. 80

(Passed March 14, 1963. In effect May 14, 1963)

**INTER-RACIAL MARRIAGES**

**An Act Amending Section 30-1-2, Utah Code Annotated 1953, Relating to Prohibited Marriages; Providing for the Removal of Certain Racial Restrictions From Marriages.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 30-1-2, Utah Code Annotated 1953, is amended to read:

**30-1-2 Incestuous Marriage Voided.**

The following marriages are prohibited and declared void:

(1) With an idiot or lunatic, with a person afflicted with syphilis or gonorrhea that is communicable or that may become communicable.

(2) When there is a husband or wife living from whom the person marrying has not been divorced.

(3) When not solemnized by an authorized person, except as provided in section 30-1-5.

(4) When at the time of marriage the male is under sixteen or the female is under fourteen years of age.

(5) Between a divorced person and any person other than the one from whom the divorce was secured until the divorce decree becomes absolute, and, if an appeal is taken, until after the affirmance of the decree.

Approved March 18, 1963.

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**CHAPTER 44**

H. B. No. 131

(Passed February 25, 1963. In Effect May 14, 1963)

**MARRIAGE OF MINORS**

**An Act Amending Section 30-1-9, Utah Code Annotated in 1953, Relating to Issuance of Marriage Licenses to Minors; Providing for Acknowledgement of Consents.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 30-1-9, Utah Code Annotated 1953, is amended to read:

**30-1-9. Application for Marriage License.**

If at the time of applying for license the male is under twenty-one or the female under eighteen years of age, and not before married, no license shall be issued without the consent of his or her father, mother or guardian, personally given or certified in writing to the clerk over his or her signature, acknowledged before an officer authorized by law to administer oaths.

Approved February 27, 1963.

# INSURANCE

## CHAPTER 45

S. B. No. 134

(Passed March 14, 1963. In effect July 1, 1963)

### INSURANCE CODE

**An Act Amending Sections 31-1-7, 31-1-10, 31-2-3, 31-2-8, 31-3-2, 31-3-3, and 31-3-6, Utah Code Annotated 1953, 31-3-7, Utah Code Annotated 1953, as Amended by Chapter 47, Laws of Utah 1959, and Chapter 2, Laws of Utah 1959, First Special Session, 31-4-4, 31-4-8, 31-4-9, 31-4-11, 31-5-2, 31-5-6, 31-5-7, 31-5-8, 31-5-9, 31-5-10, 31-5-11, 31-5-15, 31-5-16, 31-5-19, 31-5-20, 31-5-21, 31-6-9, 31-6-14, and 31-6-17, Utah Code Annotated 1953, 31-8-1, Utah Code Annotated 1953, as Amended by Chapter 60, Laws of Utah 1961, 31-9-23, 31-11-1, 31-11-6, 31-11-11, 31-11-12, 31-12-1, 31-12-2, 31-13-12, 31-13-20, 31-13-22, 31-14-4, 31-15-1, 31-15-2, 31-15-3, 31-15-4, 31-15-5, 31-15-7, 31-15-8, 31-15-14, 31-15-16, 31-16-2, 31-16-3, 31-16-5, 31-17-3, 31-17-6, 31-17-9, 31-17-10, 31-17-11, 31-17-13, 31-17-14, 31-17-15, 31-17-16, 31-17-20, 31-17-23, 31-17-24, 31-17-25, 31-17-26, 31-17-27, 31-17-28, 31-17-35, 31-17-44, 31-17-45, 31-17-47, 31-17-50, 31-18-1, 31-18-2, 31-18-3, 31-18-5, 31-19-2, 31-19-5, 31-19-7, 31-19-13, 31-19-29, 31-19-30, 31-19-31, 31-21-1, 31-21-18, 31-25-1, 31-25-2, 31-25-6, 31-25-10, 31-25-11, 31-25-13, 31-25-16, 31-26-1, 31-26-2, 31-27-1, 31-27-15, 31-27-22, 31-29-4, 31-31-2, 31-31-5, and 31-31-15, Utah Code Annotated 1953, 31-33-2, 31-33-6, Utah Code Annotated 1953, as Enacted by Chapter 56, Laws of Utah 1957, Relating to the Insurance Code of Utah; Providing for Insurance Contracts and Insurance Transactions; Providing for the Organization, Licensing, Examination, Regulation, and Supervision of all Stock, Mutual, Reciprocal, Fraternal, Title, County Mutual Fire and Lightning, Mutual Benefit, and Cooperative Companies or Associations Doing an Insurance Business in the State of Utah; Providing for the Insurance Department of the State of Utah, its Power, Duties, and Functions; Providing for the Regulation, Supervision, and Licensing of Agents, Solicitors, Brokers, Adjusters, and Surplus Line Companies and Brokers Engaging in Insurance Transactions in This State; Providing for the Regulation and Supervision of Rating Organizations and Making, Filing and Approval of Insurance Rates; Providing for Hearings Before the Insurance Department and Appeals Therefrom; Providing for Declaring as Unfair, Discriminatory and Illegal Certain Methods and Practices of Doing Business, and Establishing Penalties Therefor; and Enacting New Sections of the Insurance Code to be Known as Sections 31-2-3.5, 31-3-4.5, 31-3-8, 31-5-2.5, 31-5-3.5, 31-5-8.5, 31-14-1, 31-14-9, 31-15-17, 31-15-18, 31-15-19, 31-15-20, 31-17-10.5, 31-18-6, 31-19-8, 31-20-1, 31-20-2, 31-20-3, 31-20-4, 31-20-5, 31-20-6, 31-20-7, 31-20-8, 31-20-9, 31-22-1, 31-22-1.5, 31-22-2, 31-22-3, 31-22-4, 31-22-6, 31-22-7, 31-22-8, 31-22-9, 31-22-10, 31-22-11, 31-22-12, 31-22-13, 31-22-14, 31-22-15, 31-22-16, 31-22-17, 31-23-1, 31-23-2, 31-23-3, 31-23-4, 31-23-5, 31-23-6, 31-23-7, 31-23-8, 31-23-9, 31-23-10, 31-23-11, 31-23-12, 31-22-13, 31-23-14, 31-23-15, 31-23-16, 31-23-17, 31-23-18, 31-25-8, 31-27-9, 31-27-14, 31-29-35.5,**

31-31-10, 31-35-1, 31-35-2, 31-35-3, 31-35-4, 31-35-5, 31-35-6, 31-36-1, 31-36-2, 31-36-3, 31-36-4, 31-36-5, 31-36-6, Providing for the Adaption of Reasonable Rules and Regulations by the Insurance Commissioner, the Appointment of Qualified Examiners, and the Authority to Conduct Hearings and Procedure Thereof; Specifying the Deposits Required of Insurers as a Condition to Issuance of a Certificate of Authority; Providing for the Continuation of Certificates of Authority, and Grounds for Denial, Suspension, and Revocation Thereof; Providing for Reciprocity and Comity Between Utah and Other States Regarding Conditions Precedent to the Transaction of Business by Foreign Insurers; Providing for Surplus Lines Insurance Contracts, Conditions of Voidability Thereof, Exemptions From the Statutes Regulating Surplus Lines Insurers and Contracts; Providing for the Jurisdiction Over and Service Upon Nonadmitted Insurers; Authorizing the Appointment of Corporations as Agents; Establishing Fees to be Collected by the Insurance Commissioner; Defining the Allowable Deviations From Rating Bureau Filings; Setting Forth Conditions Under Which Recovery Under Insurance Contracts is Precluded; Providing for the Issuance and Regulation of Group Disability and Group Life Insurance Contracts; Providing for the Regulation and Filing of Insurance Contracts; Providing for the Issuance and Regulation of Life Insurance Policies; Establishing Reserves Required of Title Insurers; Providing for the Definition and Regulation of, and Punishment for, Certain Unfair and Deceptive Practices; Providing for the Subjection of Agents of Fraternal Benefit Societies in Certain Instances to General Statutes Regulating Agents of Insurers; Providing for the Application of Standard Non-forfeiture Law to Mutual Benefit Association Insurance Contracts; Adopting the Unauthorized Insurers Process Act and the Uniform Unauthorized Insurers False Advertising Process Act; and Repealing Sections 31-5-18, 31-7-15, 31-7-16, 31-7-17, 31-14-1, 31-14-9, 31-17-12, 31-18-6, 31-19-8, 31-20-1, Utah Code Annotated 1953, 31-20-2, Utah Code Annotated 1953, as Amended by Chapter 48, Laws of Utah 1953, 31-20-3, Utah Code Annotated 1953, 31-20-4, Utah Code Annotated 1953, as Amended by Chapter 48, Laws of Utah 1953, 31-20-5, 31-20-6, 31-20-7, 31-20-8, Utah Code Annotated 1953, 31-22-1, Utah Code Annotated 1953, as Amended by Chapter 48, Laws of Utah 1955, and Chapter 63, Laws of Utah 1961, 31-22-1.5, Utah Code Annotated 1953, as Enacted by Chapter 64, Laws of Utah 1961, 31-22-2, Utah Code Annotated 1953, 31-22-3, Utah Code Annotated 1953, as Amended by Chapter 65, Laws of Utah 1961, 31-22-4, 31-22-5, 31-22-6, 31-22-7, 31-22-8, 31-22-9, 31-22-10, 31-22-11, Utah Code Annotated 1953, 31-23-1, Utah Code Annotated 1953, as Amended by Chapter 58, Laws of Utah 1957, and Chapter 66, Laws of Utah 1961, 31-23-2, 31-23-3, 31-23-4, 31-25-8, 31-25-9, 31-27-9, 31-27-14, 31-27-17, 31-27-18, 31-31-6, 31-31-10, Utah Code Annotated 1953, 31-33-24, 31-33-33, Utah Code Annotated 1953, as Enacted by Chapter 56, Laws of Utah, 1957; and Providing for a Severability Clause.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Sections 31-1-7, 31-1-10, 31-2-3, 31-2-8, 31-3-2, 31-3-3, and 31-3-6, Utah Code Annotated 1953, 31-3-7, Utah Code Annotated 1953, as Amended by Chapter 47, Laws of Utah 1959, and Chapter 2, Laws of Utah 1959, First Special Session, 31-4-4, 31-4-8, 31-4-9, 31-4-11, 31-5-2, 31-5-6, 31-5-7, 31-5-8, 31-5-9, 31-5-10, 31-5-11, 31-5-15, 31-5-16, 31-5-19, 31-5-20, 31-5-21, 31-6-9, 31-6-14, and 31-6-17, Utah Code Annotated 1953, 31-8-1, Utah Code Annotated 1953, as amended by Chapter 60, Laws of Utah 1961, 31-9-23, 31-11-1, 31-11-6, 31-11-11, 31-11-12, 31-12-1, 31-12-2, 31-13-12, 31-13-20, 31-13-22, 31-14-4, 31-15-1, 31-15-2, 31-15-3, 31-15-4, 31-15-5, 31-15-7, 31-15-8, 31-15-14, 31-15-16, 31-16-2, 31-16-3, 31-16-5, 31-17-3, 31-17-6, 31-17-9, 31-17-10, 31-17-11, 31-17-13, 31-17-14, 31-17-15, 31-17-16, 31-17-20, 31-17-23, 31-17-24, 31-17-25, 31-17-26, 31-17-27, 31-17-28, 31-17-35, 31-17-44, 31-17-45, 31-17-47, 31-17-50, 31-18-1, 31-18-2, 31-18-3, 31-18-5, 31-19-2, 31-19-5, 31-19-7, 31-19-13, 31-19-29, 31-19-30, 31-19-31, 31-21-1, 31-21-18, 31-25-1, 31-25-2, 31-25-6, 31-25-10, 31-25-11, 31-25-13, 31-25-16, 31-26-1, 31-26-2, 31-27-1, 31-27-15, 31-27-22, 31-29-4, 31-31-2, 31-31-5, 31-31-15, Utah Code Annotated 1953, 31-33-2, 31-33-6, Utah Code Annotated 1953, as enacted by Chapter 56, Laws of Utah 1957, are amended to read:

**31-1-7. Definition of Insurance.**

Insurance is a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies.

**31-1-10. "Insurer" Defined.**

"Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or annuity. A reciprocal or inter-insurance exchange is an "insurer" as used in this code.

**31-2-3. Duties of Commissioner.**

(1) The commissioner shall enforce the provisions of this code, and shall execute the duties imposed upon him by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(3) It shall be the duty of the commissioner to safely keep all books and papers required by law to be filed in his office; to keep and preserve in permanent form a full record of the proceedings of his office; to issue certificates of authority to transact insurance business to all insurers that have fully complied with the laws of this state; to issue such other certificates as are required by law in the organization of insurers and the transaction of the business of insurance, and to inquire into violations of the insurance laws of this state.

(4) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper to determine whether any person has violated any provision of this code or to secure information

useful in the lawful administration of any such provisions. The cost of such additional examinations and investigations shall be borne by the state.

(5) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

### **31-2-8. Commissioner to Make Annual Report.**

The commissioner shall annually, at the earliest practical date after the 31st of March, transmit to the governor a report of his official transactions containing with respect to the year next preceding :

(1) A list of all authorized insurers transacting insurance in this state, showing as to each insurer the name, location, amount of capital (if a stock insurer) or surplus (if a mutual or reciprocal insurer), date of incorporation or formation, date of commencement of business, and kinds of insurance transacted.

(2) A condensed form of financial statement and reports of every authorized insurer for the calendar year, as audited and corrected by the commissioner, arranged in tabular form or in abstracts.

(3) A list of insurers whose business in this state was terminated and the reason for such termination; and if such termination was a result in liquidation, or of delinquency proceedings brought against the insurer in this or any other state, the amount of the insurer's assets and liabilities so far as the same are known to the commissioner.

(4) A statement of the operating expenses of the department, including personal services, travel, current expenses and capital outlay.

(5) A detailed statement of the monies and fees received by the department and from what source.

(6) Any recommendations for amendments or supplementations to insurance laws which, in the commissioner's opinion, may be desirable.

(7) Such other pertinent information and matters as the commissioner deems to be in the public interest.

(8) Copies of such report shall be published and distributed by the commissioner at the expense of the insurance department.

### **31-3-2. Examination of Accounts, Records, Documents and Transactions.**

The commissioner, for the purpose of ascertaining its condition, affairs, or compliance with this code, may as often as he deems advisable examine the accounts, records, documents, and transactions of :

(1) Any person having a contract under which it enjoys in fact the exclusive or dominant right to manage or control an insurer or any attorney in fact of a reciprocal insurer.

(2) Any person holding the shares of capital stock or policyholder proxies of an insurer for the purpose of controlling its management either as voting trustee or otherwise.

(3) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of an insurer, or insurance holding corporation, or stock corporation to finance a mutual insurer or production therefor, or corporation to be attorney in fact for a reciprocal insurer.

(4) Any insurance agent, solicitor, surplus line broker, general agent, or adjuster.

**31-3-3. Duties of Insurer and Rating Bureaus with Respect to Accounts, Records, Documents and Files—Power of Commissioner.**

(1) Every insurer or rating or surveying organization and its affiliates being examined, its officers, employees, and representatives shall produce and make freely accessible to the commissioner at its office, its accounts, records, documents and files in its or their possession or control relating to the subject of the examination and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate, or improperly kept or posted, he may employ competent persons to rewrite, post, or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounts after the commissioner has given him notice and a reasonable opportunity to do so.

(3) Neither the commissioner nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices of such person except with the written consent of such person being given in advance of such removal, or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document, or file.

**31-3-6. Expenses of Examination.**

(1) Any examination, or any part of the examination of any insurer shall be made by the commissioner or by examiners designated by him and shall be at the expense of the insurer examined.

(2) Every insurer so examined shall, at the direction of the commissioner, pay to the examiners and other persons assisting in making the examination, the actual travel expenses, reasonable living expense allowance, and compensation, at reasonable rates, customary for such examination, and as approved by the commissioner, necessarily incurred on account of the examination, upon presentation of a detailed account of such charges and expenses. A consolidated account of all such charges and expenses for the examination shall be certified to in duplicate by the insurer examined, one copy of which shall be retained by such insurer and the other copy filed in the department as a public record.

(3) The commissioner or his examiners shall not receive or accept any additional emolument on account of any examination.

**31-3-7. Power of Commissioner—Depositions, Subpoena—Oaths—Witness Fees and Mileage—Contempt Proceedings.**

(1) As to the subject of any examination, investigation, or hearing under this code, the commissioner or any deputy commissioner or examiner, who so authorized by the commissioner, may take depositions, may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of the inquiry.



(2) The subpoena shall have the same force and effect and shall be served in the same manner as if issued from a court of record. Any individual subpoenaed anywhere within this state shall attend as a witness at the place of examination, hearing, or investigation.

(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in district courts. Witness fees and mileage, together with the actual expense necessarily incurred in securing attendance of witnesses and their testimony, shall be itemized and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(4) If any individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, as provided in section 31-3-8, the commissioner shall file his written report thereof, and proof of service of his subpoena, in any court of competent jurisdiction in the county where the examinations, hearing, or investigation is being conducted. Thereupon the court shall forthwith cause the individual to be brought before it and shall punish him as if the failure or refusal related to subpoena from or testimony in that court.

#### **31-4-4. Notice of Hearing—Publication.**

(1) Except where a longer period of notice is provided by other provisions of this code relative to particular provisions, not less than ten days' advance notice of the time and place of hearing before the commissioner, stating the matters to be considered thereat, shall be given by the commissioner. If the persons to be given notice are not specified in the provisions pursuant to which the hearing is to be held, the commissioner shall give such notice to all persons whose pecuniary interests are to be directly and immediately affected by such hearing.

(2) If any such hearing is to be held for a consideration of rules and regulations of the commissioner, or for the consideration of other matters which under subsection (1) of this section would otherwise require separate notices to more than one hundred persons, in lieu of the notice required under such subsection, the commissioner may give notice of the hearing by publishing the notice in at least two daily newspapers at least once a week during the four weeks immediately preceding the week in which the hearing is to be held. The commissioner shall select such newspapers, as to location and circulation, as he deems necessary to give adequate opportunity of notice to such persons as should receive notice of the hearing. The published notice shall state the time and place of the hearing and shall specify the matters to be considered thereat. At time of first publication, the commissioner shall mail to every rating and advisory organization, which has filed with him, a copy of the published notice if the proposed hearing would affect any interest of members of such rating and advisory organizations.

(3) All such notices other than published notices, shall be given as provided by section 31-2-10.

**31-4-8. Practice, Procedure and Evidence—Record of Proceedings—Right of Person to be Present and Inspect Documents, Examine Witnesses—Removal of Person From Hearing.**

(1) The commissioner shall adopt rules of practice and procedure which are available to the public for inspection and all hearings before it shall be governed by this chapter and the rules so adopted. The technical rules of evidence need not be applied in the conduct of such hearings.

(2) A full and complete record of all proceedings had before the commissioner on any formal hearing had shall be kept by the commissioner. Any party desiring a stenographic record of oral testimony at such hearing shall make necessary arrangements for and pay the cost of the same.

(3) The commissioner shall allow any person whose pecuniary interests are to be directly and immediately affected by the hearing to be present during the giving of all testimony and shall allow him a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence in support of his interest.

(4) Any person heard shall make full disclosure of facts pertinent to the subject of inquiry.

(5) The commissioner may cause to be removed from the hearing any person causing a disturbance therein.

**31-4-9. Order on Hearing—Form of Order—Appeals.**

Within thirty (30) days after the termination of the hearing the commissioner shall make his order thereon and shall give a copy of the order to all parties.

The order shall contain :

(1) A concise statement of the action taken.

(2) The effective date of such action.

(3) The provisions of this code pursuant to which the action is taken.

(4) The findings of the commissioner in support of the action. An order on hearing may confirm, modify, or nullify action taken under an existing order of the insurance commissioner or may constitute the taking of a new action. Any person aggrieved by any official or threatened action of the commissioner, or his failure to act, if such failure to act is deemed to constitute an act under any provision of this code, may demand a hearing thereon as provided in section 31-4-1, and may appeal from the commissioner's order made pursuant thereto. An appeal may be taken only to the district court of Salt Lake County, and only from an order refusing a hearing, or any order on a hearing and the hearing before said court shall be de novo.

**31-4-11. Filing of Transcript of Record—Cost of Transcript.**

Upon being served with a copy of the petition for review, the commissioner shall forthwith prepare and file with the clerk of the court, a true and complete transcript of his record of the hearing on which the order appealed from was made, including a transcript of the oral testimony, if such was reported; provided that the interested parties may stipulate that a certain question or questions alone and a specified portion of evi-

dence shall be certified to the reviewing court; whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record or review. The costs of the transcript shall be borne by the party appealing, but may be entered in the cost bill of the party to whom costs shall be allowed.

**31-5-2. Certificate of Authority to do Business.**

(1) No insurer shall transact any insurance in this state except that authorized by a valid and existing certificate of authority issued to it by the commissioner.

(2) Every certificate of authority issued by the commissioner shall specify the name of the insurer, the location of its principal office, the name of and location of the principal office of its attorney in fact if a reciprocal insurer, and the kind or kinds of insurance it is authorized to transact in this state.

(3) No insurer shall, from offices or by personnel or facilities located in this state, solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting certificate of authority issued to it by the commissioner authorizing it to transact insurance in this state.

**31-5-6. Original Certificate of Authority—Application for Conditions Precedent.**

To apply for its original certificate of authority an insurer shall:

(1) File with the commissioner its request therefor showing:

(a) its name, home office location, type of insurer, organization date, and state or country of its domicile;

(b) the kinds of insurance it proposes to transact;

(c) additional information as the commissioner may reasonably require;

(2) file with the commissioner:

(a) a copy of its charter as amended, certified, if an other-state or alien insurer, by the proper public officer of the state or country of domicile, or in the case of a reciprocal or inter-insurance exchange in lieu of the requirements in this subsection, file a copy of the subscriber's agreement or power of attorney used by such reciprocal or inter-insurance exchange;

(b) a copy of its by-laws, if any, certified by its proper officer;

(c) a statement of its financial condition, management and affairs on a form satisfactory to the commissioner;

(d) a copy of each policy form and application which it proposes to use in this state;

(e) if an other-state or alien insurer, or a domestic reciprocal insurer, an appointment of the commissioner as its attorney to receive service of legal process;

(f) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its proper officer;

(g) if an other-state or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly

organized and is authorized to transact the kinds of insurance proposed to be transacted;

(h) if a domestic reciprocal insurer, the declaration required by section 31-10-8 of this code;

(i) a copy of its acceptance of the provisions of the Constitution and laws of this state;

(j) other documents or stipulations as the commissioner may reasonably require to evidence compliance with the provisions of this code;

(3) deposit with the commissioner the fees required by this code to be paid for the application and for the certificate of authority, if granted.

(4) An application for a certificate of authority shall be examined by the commissioner, and if he finds the application to be complete and that the documents included therewith are otherwise in proper order, he shall forward the applicant insurer's articles of incorporation and by-laws, if any, or copy of the power of attorney if a reciprocal insurer, and the insurer's appointment of the commissioner as process agent to the attorney general for examination. The attorney general shall examine the documents and, if found by him to be in accordance with the requirements of this code and not inconsistent with the constitution of this state, he shall so certify an opinion to the commissioner.

#### **31-5-7. Commissioner to Issue Certificate of Authority.**

(1) If upon completion of its application the commissioner finds, from the application, and the attorney general's opinion referred to in section 31-5-6, and such other investigation and information as he may make and acquire, that an insurer has met the requirements for and is fully entitled thereto under this code, he shall issue to it a proper certificate of authority. If the commissioner does not so find, the authority shall be refused within a reasonable length of time following completion by the insurer of the requisites therefor.

(2) The certificate of authority, if issued, shall specify the kind, or kinds, of insurance the insurer is authorized to transact in this state. At the insurer's request, the commissioner may issue authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in this code.

#### **31-5-8. Certificate of Authority—Expiration Date—Renewal—Amendment.**

(1) An insurer's subsisting certificate of authority is evidence of its authority to transact in this state the kind or kinds of insurance specified therein, either as direct insurer or as a reinsurer or as both.

(2) The commissioner may amend a certificate of authority at any time to accord with amendment to an insurer's charter.

(3) Although issued to the insurer, the certificate of authority is at all times the property of the state of Utah. Upon any expiration, suspension, or termination thereof, the insurer shall promptly deliver the certificate of authority to the commissioner.

#### **31-5-9. Refusal of Renewal—Revocation—Grounds.**

The commissioner shall refuse to continue or shall suspend or revoke

the certificate of authority, in addition to other grounds therefor in this code, if an insurer;

(1) is an other-state or alien insurer and no longer qualifies or meets the requirements of this code as for the original issuance of the authority; or, if it is a domestic mutual or reciprocal insurer, it fails to make good a deficiency of assets as required by the commissioner under this code;

(2) is a domestic stock insurer and has admitted assets less in amount than its liabilities, in including its capital stock as a liability, and has failed to make good such deficiency as required by the commissioner under this code;

(3) fails to pay any final judgment rendered against it in this state upon any policy, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after appeal rights relative to the judgment have expired.

#### **31-5-10. Additional Grounds for Refusing, Suspending or Revoking Certificate.**

The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) fails to comply with any provision of this code other than those for violation of which refusal, suspension, or revocation is required by this code, or with any proper order of the commissioner;

(2) is found by the commissioner to be in such condition that its further transactions of insurance in this state would be hazardous to policyholders and the public in this state;

(3) refuses to remove or discharge, or terminate its relationship with a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude;

(4) habitually compels claimants under policies either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due;

(5) conducts its business outside this state in such manner as unjustly to discriminate against or prejudice the interests of the people of this state;

(6) is affiliated with and is under the same general management, or interlocking directorate, or ownership as another insurer which transacts insurance in this state, other than as a surplus lines insurer, without having a certificate of authority therefor;

(7) exceeds its charter powers or its certificate of authority;

(8) refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuses to perform any legal obligation relative to the examination.

**31-5-11. Notice of Intention to Refuse Renewal.**

The commissioner shall give an authorized insurer notice of his intention to refuse to continue, suspend, or revoke its authority not less than thirty days before the order of refusal, suspension, or revocation is to become effective, except that no advance notice of intention is required where the order results from a domestic insurers failure to make good a deficiency of assets as required by the commissioner under this code.

**31-5-15. Name in Which Business Conducted—Subrogation—Limitation or Assumption of Name.**

(1) Each insurer shall conduct its business in its own legal name, except that in subrogation actions it may sue in the name of the insured.

(2) No insurer shall assume or use a name deceptively similar to that of any other authorized insurer.

**31-5-16. Foreign Companies—Appointment of Process Agent—Manner of Designation—Irrevocability of Appointment.**

(1) Each authorized other-state or foreign insurer shall appoint the commissioner as its attorney to receive, and upon whom shall be served, all legal processes issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute service upon the insurer, and legal service of such processes against such an insurer can be had only by service upon the commissioner.

(2) In the appointment the insurer shall designate by name and address the person to whom the commissioner shall forward a legal process so served upon him. The insurer may change the designation by filing a new appointment.

(3) The appointment shall be irrevocable, shall bind any successor in interests to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising therefrom.

(4) The commissioner shall not be constituted the attorney for an unauthorized insurer for any purpose, except as provided in chapters 15 and 35 of this code.

**31-5-19. Insurance Contracts—Necessity to be Transacted Through or Countersigned by Licensed Resident Agent—Signing or Countersigning in Blank Prohibited—Effect of Violation—Reciprocity as to Fees or Commissions for Countersigning.**

(1) No insurer shall issue an insurance contract covering a subject of insurance resident, located, or to be performed in this state unless the insurance contract or countersignature endorsement is signed or countersigned by a licensed agent of the insurer, resident in this state, except as provided in section 31-5-20. When two or more insurers issue a single policy of insurance, the policy may be countersigned on behalf of all insurers appearing thereon, by a licensed agent resident in this state, of any one of such insurers. The commissioner may suspend or revoke the certificate of authority of any insurer violating this provision.

(2) An agent shall not sign or countersign any insurance contract, or countersign endorsement, in blank or by use of a facsimile signature. The commissioner shall suspend or revoke the license of any agent violating this provision.

(3) Such violations shall not invalidate any insurance contract.

(4) Whenever the laws of any other state of the United States require a fixed fee or commission to be paid resident agents for the countersigning of policies, all insurance companies doing business within this state shall comply with the same conditions precedent, computed upon the same basis as those provided by the state in which the policy originated.

### **31-5-20. Exceptions as to Requirement of Interventions of Local Agent.**

The provision of sections 31-5-19 shall not apply to:

(1) life insurance or annuity contracts and accidental death and disability benefits supplemental thereto;

(2) insurance contracts covering the rolling stock, vessels, or aircraft of any common carrier in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance, or operation thereof;

(3) insurance contracts covering property in the course of transportation interstate or in foreign trade, or any liability or risk incident thereto;

(4) re-insurance contracts between insurers;

(5) insurance contracts issued by mutual or reciprocal insurers not operating on an agency basis in the solicitation of business;

(6) bonds in favor of the United States government;

(7) policies of disability insurance not delivered or issued for delivery in this state;

(8) bid bonds issued by an authorized insurer in connection with any public or private contract.

### **31-5-21. Annual Statements—Form and Requisites—Effect of Failure to file.**

(1) Each authorized insurer shall annually before the first day of March file with the commissioner a true statement of its financial condition, transactions, and affairs as at the thirty-first day of December preceding. The statement shall contain information as required by this code or by the commissioner, and shall be verified by the oaths of at least two of the insurer's principal officers.

(2) The commissioner shall annually during November and December furnish each such insurer upon its request duplicate copies of annual statement forms. The statement forms may be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner.

(3) The annual statement of alien insurers shall relate only to its transactions and affairs in the United States unless the commissioner

requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.

(4) The commissioner may spend or revoke the certificate of authority of any insurer failing to file its annual statement when due or during any extension of time therefor which the commissioner, for good cause, may grant.

#### **31-6-9. Restriction Upon Solicitation Under Permit.**

Solicitations under a solicitation permit shall be made only under licenses issued by the commissioner to individuals deemed by him qualified therefor, upon application and payment of the fee provided in this code. In lieu of the foregoing requirement, the commissioner in his discretion may require that solicitations under a solicitation permit shall be made only by those persons registered as dealers or salesmen by the securities commission of the state of Utah.

#### **31-6-14. Proposed Insurer or Syndicate—Power of—Issuance of Stock or Participation Agreement—Forfeiture of Subscription Contract.**

(1) No such proposed stock insurer, insurance holding corporation, stock corporation to finance an insurer or insurance production therefor, or corporation to manage an insurer, or corporation to be attorney in fact for a reciprocal insurer, or syndicate shall issue any share of stock or participation agreement except for payment in cash or in securities eligible for investment of funds of insurers, or until all subscriptions received under the solicitation permit have been fully paid, and, if an insurer, a certificate of authority has been issued to it.

(2) Every subscription contract to shares of such insurer or corporation calling for payments in installments, together with all amounts paid thereon, may at the option of the insurer, be forfeited if payments are not made on or before due dates and upon failure to make good any such delinquency upon not less than forty-five days' notice in writing, and every such contract shall so provide.

#### **31-6-17. Solicitation Permit—Condition Precedent to Solicitating or Receiving Funds for Corporate Securities—Issuance of Permit by Commissioner—Duration of—Terms and Conditions.**

(1) No domestic insurer, or insurance holding corporation, or stock corporation affiliated with a mutual insurer, or attorney in fact corporation of a reciprocal insurer shall, after it has received a certificate of authority, if an insurer, or has completed its initial organization and financing if a corporation other than an insurer, receive or solicit funds in exchange for any new issue of its corporate securities, other than through a stock dividend, until it has applied to the commissioner for, and has been granted, a solicitation permit.

(2) The commissioner shall issue such a permit unless he finds that the funds proposed to be secured are excessive in amount for the purpose



intended, or that the proposed securities or the manner of their distribution are inequitable, or that issuance of the securities would jeopardize the interests of policyholders or the holders of other securities of the insurer or corporations.

(3) Any such solicitation permit granted by the commissioner shall expire not more than two years from its date, and shall contain such terms and conditions as may be required by other provisions of this code and as may be reasonable in the premises, and as may be required by rule or regulation of the commissioner.

### **31-8-1. Capital Stock—Increase of—Method Outlined—When Increase Effective.**

(1) An increase of the capital stock of a domestic stock insurer shall be by amendment of its charter.

(2) If the increased capital stock is to be distributed as a stock dividend, such increased capital stock may be fully paid in from any available surplus fund as is provided in section 31-8-3, and such payment shall be effected by a transfer on the insurer's books from its surplus account to its capital account.

### **31-9-23. Extinguishment of Contingent Liability—Required Surplus—Who May Purchase Policies—What Constitutes Surplus.**

(1) A domestic mutual insurer after it has established a surplus not less in amount than the minimum capital required of a domestic stock insurer, to transact like kinds of insurance, and for so long as it has an unrevoked authority to issue non-assessable policies, may extinguish the contingent liability to assessment of its members and thereafter issue its policies without such liability. Any person, government, or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee or fiduciary may purchase such policies.

(2) Any such deposit made with the commissioner as a prerequisite to the insurer's certificate of authority may be included as part of the surplus required in this section.

(3) When the surplus has been established and the commissioner has so ascertained, upon application by the insurer, the commissioner shall issue to it his certificate authorizing the extinguishment of the contingent liability of its members and the issuance of policies free therefrom. Policies issued while such certificate is unrevoked shall be free from contingent liability.

### **31-11-1. Stock Companies—Right to Transact Business Here—Required Paid-in Capital and Surplus.**

(1) Stock insurers may transact kinds of insurance in this state upon qualifying therefor and by having paid-in capital and surplus represented by admitted assets, as follows:

	Minimum Capital Required	Minimum Surplus Required
(a) Life Insurance .....	\$200,000.00	\$100,000.00
(b) Disability Insurance .....	\$200,000.00	\$100,000.00
Life and Disability Insurance .....	\$200,000.00	\$100,000.00
(c) Property Insurance .....	\$200,000.00	\$200,000.00
(d) Marine and Trans- portation Insurance .....	\$200,000.00	\$200,000.00
(e) Casualty Insurances:		
(a) Vehicle only .....	\$200,000.00	\$200,000.00
(b) General casualty .....	\$300,000.00	\$200,000.00
(c) General casualty without workmen's compensation .....	\$200,000.00	\$150,000.00
(f) Suretyship Insurances:		
(a) Surety .....	\$300,000.00	\$200,000.00
(b) Bail bonds only .....	\$100,000.00	\$100,000.00
(g) Title Insurance: In accordance with the provisions of chapter 25 of this code.		
(h) All types of insurance, except life and title .....	\$400,000.00	\$300,000.00

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in any and all areas in which it operates or proposes to operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) (a) An insurer holding a valid certificate of authority to transact insurance in this state immediately prior to the effective date of this act may continue to be authorized to transact the same kinds of insurance as permitted by such certificate of authority by maintaining thereafter unimpaired not less than the same amount of paid-in capital stock as required under the laws of this state for such authority in force immediately prior to such effective date, and as if such laws had continued in force; except that in no case shall any such insurer be thereby required to have and maintain a larger amount of capital and surplus than a like insurer transacting the same kinds of insurance and formed under this code.

(b) Such an insurer shall not hereafter be granted authority to transact any other or additional kind of insurance unless it then fully complies with the requirements as to capital and surplus, as applied to all the kinds of insurance it then proposes to transact, as provided under subsection (1) of this section.

### 31-11-6. Vehicle Insurance Defined.

(1) Vehicle insurance is insurance against loss or damage to any land vehicle or aircraft or to property while contained therein or thereon, or being loaded or unloaded therein or therefrom, and against any loss

or liability resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft.

(2) Insurance against accidental death or accidental injury to persons while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, when such insurance is issued as part of insurance on the vehicle, or aircraft, shall be deemed to be vehicle insurance.

### **31-11-11. Authority of Existing Insurer to Transact Additional Kinds of Insurance—Life and Title Insurance.**

(1) An insurer authorized to transact life insurance shall not be authorized to transact any additional kind of insurance other than disability insurance; except that any life insurer which immediately prior to the effective date of this code, held a certificate of authority to transact in this state certain kinds of insurance in addition to life and disability insurances, may continue to be so authorized by the commissioner; and except that a life insurer may acquire one or more subsidiaries doing other kinds of insurance business, as provided in section 31-13-22 (6).

(2) An insurer authorized to transact title insurance shall not be authorized to transact any additional kind of insurance.

### **31-11-12. Right as Dependent on Amount of Capital and Surplus.**

Except as provided in section 31-11-11, insurers shall be authorized to transact kinds of insurance which now or hereafter may be written in this state, whether defined above or not, upon qualifying therefor and possessing capital and surplus, if a stock insurer, or surplus, if a mutual or reciprocal insurer, at least equal to the largest amount of capital and surplus required, if a stock insurer, or surplus required, if a mutual or reciprocal insurer from among the kinds of insurance to be transacted, plus capital or surplus to the amount of at least \$100,000.00 for each additional kind of insurance proposed to be transacted; provided, that the maximum amount of capital and surplus, if a stock insurer, or surplus, if a mutual or reciprocal insurer, required of multiple line insurers shall not exceed \$700,000.00.

### **31-12-1. Financial Condition of Insurers.**

In any determination of the financial condition of any insurer there shall be allowed as assets only the following:

(1) cash in the possession of the insurer or in transit under its control, and the balance of any deposit of the insurer in a solvent bank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code, and income due or accrued thereon;

(3) premium notes, policy loans, and other policy assets and liens on policies of life insurance, in amount not exceeding legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums in the case of a life insurer which carried the full annual mean tabular reserve liability;

(5) premiums in course of collection, other than for life insurance, not more than ninety days past due, less commissions payable thereon, (the foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or any of its instrumentalities);

(6) installment premiums other than life insurance premiums, in accordance with regulations prescribed by the commissioner consistent with practices formulated or adopted by the National Association of Insurance Commissioners;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by regulation prescribed by the commissioner;

(8) re-insurance recoverable by a ceding insurer from a solvent reinsurer qualified to take such re-insurance under this code, unless re-insurance recoverable from an insurer not authorized in this state, in an amount not exceeding the liabilities carried by the ceding insurer for amounts withheld under a re-insurance treaty with such unauthorized insurer as security for the payment of obligations thereunder, if such funds are held subject to withdrawal by, and under the control of, the ceding insurer;

(9) amounts receivable by an assuming insurer for funds withheld by a ceding insurer under a re-insurance treaty;

(10) deposits or equities recoverable from underwriting bonds and associations, syndicates and re-insurance funds, or from any suspended banking institutions, to the extent that the same are available for the payment of general liabilities;

(11) other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims, at values to be determined by him;

(12) electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars, which cost shall be amortized in full over a period not to exceed ten calendar years.

### **31-12-2. Items Not Allowable as Assets.**

(1) The following shall not be allowed as assets in determination of the financial condition of any insurer:

(a) good will, trade names, agency plants, and other like tangible assets;

(b) prepaid or deferred charges for expenses and commissions paid by the insurer:

(c) advances to officers (other than policy loans or loans made pursuant to section 31-7-12), whether secured or not, and advances to employees, agents and other persons on personal security only;

(d) stock of such insurer, owned by it, or any equity therein or loans

secured thereby, or any proportionate interest in such stock through the ownership by such insurer of an interest in another firm, corporation or business unit;

(e) furniture, fixtures, safes, equipment, automobiles, library, stationery, literature, and supplies, including such as are used by an insurer in, or in connection with, the conduct of its own business in its home or branch offices, but excluding such other personal property as an insurer is permitted to hold under section 31-13-17, and excluding data processing and accounting systems authorized under section 31-12-1 (12).

(f) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined by the values approved annually by the committee of values of the National Association of Insurance Commissioners.

(2) All assets not allowed and all other assets of doubtful value or character included as ledger or nonledger assets in any statement by an insurer to the commissioner, or in any examiner's report to him, shall also be reported to the extent of the value disallowed, as deductions from the gross assets of the insurer.

### **31-13-12. Bonds or Other Evidences of Debt Secured by Mortgage or Deed of Trust—Purchase Money Mortgages.**

An insurer may invest any of its funds in:

(1) bonds or evidences of debt which are secured by first mortgages or deeds of trust on improved unencumbered real property located in the United States, and in chattel mortgages in connection therewith pursuant to section 31-13-16;

(2) the equity of the seller of any such property in the contract for a deed, covering the entire balance due on a bona fide sale of such property, in amount not to exceed ten thousand dollars or the amount permissible under section 31-13-4, whichever is greater, in any one such contract for deed; nor in any amount in excess of the following percentages of the actual sale price or fair value of the property, whichever is the smaller;

(a) if a dwelling primarily designed for single family occupancy and occupied by the purchaser under such contract—seventy-five per cent,

(b) in all other cases,—sixty-six and two-thirds per cent;

(3) purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to section 31-13-17;

(4) bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration under the terms of an Act of Congress of the United States of June twenty-seventh, nineteen hundred thirty-four, entitled the "National Housing Act," as heretofore or hereafter amended;

(5) bonds or notes secured by mortgage or trust deed guaranteed as to principal by the Administrator of Veterans' Affairs pursuant to the provisions of Title III of an Act of Congress of the United States of June 22, 1944, entitled the "Servicemen's Readjustment Act of 1944," as heretofore or hereafter amended;

(6) evidence of debt secured by first mortgages or deeds of trust upon lease-hold estates, running for a term of not less than fifteen years beyond the maturity of the loan as made or as extended, in improved real property, otherwise unencumbered, if the mortgagee is entitled to be subrogated to all the rights under the lease-hold.

**31-13-20. Loans to Policyholders—Limitation on Loan.**

A life insurer may loan to its policy holder upon the pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

**31-13-22. Insurer Other Than Life Insurer—Stocks—Investments by Life Insurer in Insurance Stocks—Limitation Upon Insurance Stocks.**

(1) Within the limits and standards of section 31-13-23, an insurer other than a life insurer may invest a portion of its surplus funds in aggregate amount not exceeding fifty per cent of its surplus over its capital stock and other liabilities, or thirty-five per cent of its capital funds, whichever is greater, in the stocks of other insurers organized and existing under the laws of the states of the United States.

(2) Within the limits and standards of section 31-13-23, a life insurer may invest in aggregate amount not exceeding five per cent of its admitted assets, or not exceeding twenty-five per cent of its surplus over its capital stock and other liabilities, or of surplus over its required minimum surplus if a mutual or reciprocal insurer, whichever amount is the lesser, in such insurance stocks.

(3) An insurer shall not purchase or hold as an investment more than ten per cent of the voting stock of any one other insurer, and subject further to amount invested as limited by section 31-13-4. This limitation shall not apply if such other insurer is the subsidiary of, and substantially all its shares having voting power are owned by a domestic insurer.

(4) No such insurance stock shall be eligible as an investment unless it meets the qualifications for stocks of other corporations as set forth in section 31-13-23.

(5) The limitations on investments in insurance stocks set forth in this chapter shall not apply to stocks acquired under a plan for acquisition of a subsidiary insurer or for merger of two or more insurers which has been approved by the commissioner, or to shares received as stock dividends upon shares already owned.

(6) In addition to investments permissible under subsections (2) and (3) of this section a life insurance company may invest in, or otherwise acquire, under conditions set forth in this section, the stocks, including voting trust certificates, certificates of deposit, interim receipts and other similar instruments representing such stock, of one or more solvent domestic or foreign insurance corporations under the following conditions:

(a) No investment authorized by subsection (6) of this section

shall be retained by the insurer unless at all times after one year from the date of its acquisition the insurer holds a majority of the total issued and outstanding stocks or shares of such corporation having voting powers; and no such investments in excess of 10% of the total issued and outstanding common stocks or shares of such corporation shall be acquired unless a notice of intention of such proposed acquisition shall have been filed with the commissioner of insurance not less than 90 days in advance of such proposed acquisition, provided that the commissioner may at any time after such filing disapprove such acquisition and order its disposition if he finds that it does not meet the requirements of this subsection.

(b) The commissioner may authorize acquisition or retention of less than a majority of the total issued and outstanding stocks or shares of a foreign insurance corporation having voting powers, if he finds that (1) under the law of the domicile of such corporation acquisition or retention of such a majority is impracticable or unfeasible, and (2) acquisition or retention of less than such a majority will not be prejudicial to the interests of the domestic life insurance company's policy holders or members or of the people of this state.

(c) For the purposes of this subsection, any corporation the stocks of which have been acquired and are being retained by a life insurance company pursuant to paragraphs (a) and (b) hereof shall be deemed the subsidiary of such insurer.

(d) At no time shall a life insurance company make an investment in any subsidiary organized or acquired pursuant to this subsection which will bring the aggregate cost of its total investment in subsidiaries organized or acquired pursuant to this subsection to the amount in excess of the lesser of: (1) \$20,000,000; or (2) the greater of 35% of such company's surplus to policyholders or 50% of its surplus over and above its liabilities and capital; or (3) the sum of (i) 4% of its admitted assets not in excess of \$100,000,000, (ii) 2% of its admitted assets in excess of \$100,000,000 but not in excess of \$250,000,000, (iii) 1% of its admitted assets in excess of \$250,000,000 but not in excess of \$500,000,000, (iv)  $\frac{1}{2}$  of 1% of its admitted assets in excess of \$500,000,000 but not in excess of \$1,000,000,000, and (v)  $\frac{1}{4}$  of 1% of its admitted assets in excess of \$1,000,000,000. For purposes of this subsection, total investment by a life insurance company in a subsidiary organized or acquired pursuant to this subsection shall include said company's loans, advances, contributions to each subsidiary, its holdings of bonds, notes and stocks of such subsidiary, and interests therein of any other subsidiary or subsidiaries of such life insurance company. The aggregate value of the total investment by a life insurance company in subsidiaries organized or acquired pursuant to this section shall not be allowed as an admitted asset in excess of 50% of its surplus to policyholders or 60% of its surplus, whichever is greater.

(e) The name of any corporation which is a subsidiary of a life insurance company shall not be such as to mislead or deceive the public.

(f) Any subsidiary acquired by a life insurance company pursuant to this subsection shall make no investment in or loan or advance to the parent corporation or to any affiliate or other subsidiary of the

parent corporation; and, except with the approval of the commissioner as not prejudicial to the interests of the policyholders or members of such corporations or of the people of this state, none of such corporations shall make transfers to any other such corporation of any of its assets, other than transfers in connection with reasonable fees and expenses, interest, premiums and annuity considerations, debt repayments and dividends.

(g) This subsection shall have no application to a fraternal benefit society, title insurer or reciprocal insurer.

**31-14-4. Taxation of Insurance Companies—Taxable Items—Determination of Amount of Tax—Premium Underwriting Profits—Deductions.**

Every insurance company engaged in the transaction of business in this state shall pay to the state tax commission, on or before the thirty-first day of March in each year:

(1) a tax of two and one-fourth ( $2\frac{1}{4}$ ) per cent of the total premiums received by it during the next preceding calendar year from insurance covering property or risks located in this state, other than ocean marine as specified in subsection (2) hereof, less the amount of all premiums returned or credited to policyholders on direct business in this state and premiums received for re-insurance of such property or risks and, less the amount of dividends, including premium reduction coupons maturing within said year, paid or credited to policyholders within this state or applied in abatement or reduction of premiums due during the calendar year next preceding, and less premiums on policies which have been or will be issued by domestic benefit, or cooperative benefit associations;

(2) a tax of five per cent of its taxable underwriting profit, ascertained as hereinafter provided, from all insurance written within this state during the next preceding calendar year, upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from, importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for, and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks.

The underwriting profit on such ocean marine insurance written within this state shall be that proportion of the total underwriting profit of such insurer from such ocean marine insurance written within the United States which the amount of net premiums of such ocean marine insurance written within this state bears to the amount of net premium of such insurer from such ocean marine insurance written within the United States.

The underwriting profit of such insurers on such ocean marine insurance written within the United States shall be determined by deducting from the net earned premiums on such ocean marine insurance written within the United States during the taxable year, meaning



thereby the calendar year next preceding the date on which such tax is due, the following items:

(a) net losses incurred, meaning gross losses incurred during such calendar year under such ocean marine insurance contracts written within the United States, less re-insurance claims collected or collectible and less net salvages or recoveries collected or collectible from any source applicable to the corresponding losses under such contracts;

(b) net expenses incurred in connection with such ocean marine contracts, including all state and federal taxes in connection therewith; but in no event shall the aggregate amount of such net expenses deducted exceed forty per cent of the net premiums on such ocean marine insurance contracts, ascertained as hereinafter provided; and

(c) net dividends paid or credited to policyholders on such ocean marine insurance contracts.

In determining the amount of such tax, net earned premiums on such ocean marine insurance contracts written within the United States during the taxable year shall be arrived at as follows:

From gross premiums written on such contracts during the taxable year deduct any and all return premiums, premiums on policies not taken, premiums paid for re-insurance of such contracts and net unearned premiums on all such outstanding contracts at the end of the taxable year; and add to such amount net unearned premiums on such outstanding marine insurance contracts at the end of the calendar year next preceding the taxable year.

In determining the amount of such tax, net expenses incurred shall be determined as the sum of the following:

(a) specific expenses incurred on such ocean marine insurance business consisting of all commissions, agency expenses, taxes, licenses, fees, loss adjustment expenses, and all other expenses incurred directly and specifically in connection with such business less recoveries or reimbursements on account of or in connection with such commissions or other expenses collected or collectible because of re-insurance or from any other source;

(b) general expenses incurred on such ocean marine insurance business, consisting of that proportion of general or overhead expenses incurred in connection with such business which the net premiums on such ocean marine insurance written during the taxable year bear to the total net premiums written by such insurer from all classes of insurance written by it during the taxable year, within the meaning of this paragraph, general or overhead expenses shall include salaries of officers and employees, printing and stationery, all taxes of this state and of the United States, except as included in paragraph (a) above, and all other expenses of such insurer, not included in paragraph (a) above, after deducting expenses specifically chargeable to any or all other classes of insurance business.

In determining the amount of such tax, the taxable underwriting profit of such insurer on such ocean marine insurance business written within this state, shall be ascertained as follows:

(a) In the case of every such insurer which has written any such business within this state during three calendar years immediately preceding the year in which such taxes were payable, the taxable under-

writing profit shall be determined by adding or subtracting, as the case may be, the underwriting profit or loss on all such insurance written within the United States, ascertained as hereinbefore provided, for each of such three years, and dividing by three.

(b) In the case of every such insurer other than as specified in paragraph (a) last above, such taxable underwriting profit, if any, shall be the underwriting profit, if any, on such ocean marine insurance business written within this state during the taxable year, ascertained as hereinbefore provided; but after such insurer has written such ocean marine insurance business within this state during three calendar years, an adjustment shall be made on the three year average basis by ascertaining the amount of tax payable in accordance with paragraph (a) above.

(3) If any insurance company doing business in this state shall have paid a property tax in the state of Utah or if any domestic insurance company shall have paid any fee for examination required by this code during said year, it shall be entitled to deduct from the tax herein provided for the amount of such property tax paid for general state purposes, and the amount of any such examination fee.

(4) The taxes and fees as provided herein shall be in lieu of all other state, county, and municipal licenses and fees of every kind and character. All monies collected by the state tax commission under this section shall be covered into the state treasury to the credit of the state general fund, except as provided in section 31-14-2.

#### **31-15-1. Surplus Line Brokers—Business With Non-admitted Insurers.**

No person within this state shall transact any insurance on property located or operations conducted within, or on the lives of persons or residents of this state with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter. This provision shall not apply to any adjuster or attorney at law representing such an insurer from time to time in this state in his professional capacity.

#### **31-15-2. Right of Surplus Line Broker to Place Insurance With Non-admitted Insurer—Conditions—Filing Statement With Commissioner—Notification From Commissioner—Public Inspection of Statement—Rules and Regulations.**

A surplus line broker may solicit and place insurance with nonadmitted insurers only if such insurance cannot be procured from a majority of the insurers already licensed and writing in this state the particular class or classes of insurance. Such part of the insurance as cannot be so procured may be procured from nonadmitted insurers; provided, that the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this section where the insurance is actually placed with a nonadmitted insurer at a lower premium than the lowest premium which could be obtained from an admitted insurer unless at the time such insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest

procurable rates from admitted insurers. Unless the commissioner within five days after such filing notifies the filing broker that in his opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect such insurance. If within such five day period the commissioner notifies the surplus line broker that such insurance is in violation of this section and orders the broker to effect termination of such insurance within ten days from such notice, and the broker fails to refuse to effect such termination, such failure or refusal is a violation of this section. Statements filed under this chapter shall not be subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made so subject. The commissioner may make and publish reasonable rules and regulations consistent with this chapter in respect to transactions governed thereby and the basis for this determination hereunder.

### **31-15-3. License to Surplus Line Broker—Revocation of License.**

The commissioner shall issue a license authorizing any applicant to act as a surplus line broker from the date of such license until the first of March succeeding, who at the time of the application, or renewal, is a licensed insurance agent operating an insurance business in, and who is a resident of the state of Utah; provided, that if such applicant is a firm, partnership, association, or corporation, no license shall be issued unless the persons representing the firm, partnership, association or corporation are all residents of the state of Utah, and the majority of whom are licensed agents operating an insurance business in Utah.

Said license shall then be issued on the following conditions :

- (1) Payment in advance to the commissioner of a fee of \$25.00.
- (2) Delivery to the commissioner of a bond to the state of Utah in the sum of \$2,000 with an admitted surety insurer, conditioned that said licensee will fully and faithfully comply with the requirements of this chapter.

If in the opinion of the commissioner the solvency of any surety on a bond required in this section has become impaired or doubtful he shall notify the broker, and unless within ten days after receipt of such notice the solvency of such surety is proved to the satisfaction of the commissioner or a new bond is substituted therefor the commissioner shall revoke the license of the broker.

### **31-15-4. Duty of Broker to Maintain Office and Keep Books.**

A surplus line broker shall maintain in good faith an office in this state and shall keep in said office complete books of the business transacted by him with nonadmitted insurers under his license as a surplus line broker showing :

- (1) The effective date of such insurance;
- (2) The names of the insurers and of the insured;
- (3) The gross premium payable therefor;
- (4) The terms and character of insurance and location, of the subject matter;
- (5) Statements in the same detail as in the case of insurance in

effect, of all such insurance cancelled or on which premiums have been increased or reduced and the amounts of additional or of return premiums thereon;

(6) The name and address of the person designated by the nonadmitted insurer upon whom legal process shall be mailed by the commissioner.

#### **31-15-5.—Duty to Furnish Commissioner With Lists—Examination of Books and Accounts.**

Whenever required to do so by the commissioner, such surplus line broker shall furnish to the commissioner a list of the majority of the admitted insurers from which the entire amount of insurance desired was not obtainable.

The commissioner whenever he deems necessary may examine the books and accounts of any surplus line broker for the purpose of determining whether or not the broker is conducting his business in accordance with the provisions of this chapter. For the purpose of making such examination such broker shall allow the commissioner, or his duly designated examiner, free access at all times to all the broker's books and papers; and the commissioner, or examiner, shall thoroughly inspect and examine all the broker's affairs.

All the examinations by the commissioner, or examiner, shall be at the expense of the surplus line broker, such expenses to be paid in advance. If any broker refuses to pay such expenses in advance, the commission may refuse to issue a renewal of the license of such broker and shall revoke the license of the broker.

#### **31-15-7. Tax Payment to Commissioner.**

Every surplus line broker shall annually on or before the first day of April of each year pay to the insurance commissioner for the use of the state of Utah a tax of three per cent of the gross premiums upon business done by him under authority of his license during the preceding calendar year, less three per cent of return premiums paid by him by reason of cancellation or reduction of premiums, provided that the surplus line broker must collect from the insured the tax above referred to.

#### **31-15-8. Determination of Tax Payable—Penalties.**

For the purpose of determining such tax, the total premium charged for all such nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this state in such proportion as the total premium on the insured properties or operations in this state, as computed on the exposure in this state on the basis of any single standard rating method in use in all states or countries where such insurance applied, bears to the total premium so computed in all states or countries in which such nonadmitted insurance may apply. This provision shall not apply to interstate motor transit operations conducted between this and other states. With respect to such operations surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less;

(1) such portion of the premium as is determined as herein provided to have been changed for operations in other states taxing such premium on operation in such states of an insured maintaining its headquarters office in this state:

(2) The premium for any operations outside of this state of an insured who maintains a headquarters operating office outside of this state and a branch office in this state.

A penalty of one per cent shall be added to each calendar month or fraction thereof after said first day of April during which such tax or any portion thereof remains unpaid, except that the commissioner may remit the penalty in a case where the commissioner finds as a result of examination or otherwise that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.

#### **31-15-14. What Constitutes End of Brokers' Authority and Revocation of License.**

The following acts shall constitute a termination of the authority of a surplus line broker and shall constitute revocation of his license whether or not the commissioner formally revokes the same:

- (1) The removal of the broker's office from the state;
- (2) the removal of the accounts of his business from this state;
- (3) the closing of his office for a period of more than twenty consecutive days;
- (4) willful failure or refusal to perform any of the other duties specified in this chapter;
- (5) suspension or cancellation of the insurance agent's license held by the surplus line broker.

#### **31-15-16. Duty of Insured—Penalties and Forfeitures.**

Every person for whom insurance has been effected with nonadmitted insurers shall, upon order in writing by the commissioner, produce for the commissioner's examination all policies, contracts, and other documents evidencing such insurance and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for such insurance. For refusal to obey such order such person shall be guilty of a misdemeanor.

#### **31-16-2. Placing Securities in Safe Deposit Box—Duties and Rights of Commissioner With Respect to Box—Rights of Depositing Company—Liability of Commissioner on Official Bond.**

It shall be the duty of the commissioner upon receipt of securities from any insurer to forthwith deposit the same, in the presence of the president or authorized agent of the company.

(1) in any solvent trust company or other solvent financial institution having trust powers domiciled in this state, such depository to service such securities for the benefit and at the expense of the insurer under instructions of the commissioner; or,

(2) in a safe deposit box in the vault of an established safe deposit institution, bank, or trust company located in Salt Lake City, state of Utah, to be selected by the commissioner. The box shall require two distinct and different keys to unlock the same, one key to be kept by the

commissioner and the other by the insurer. The box shall not be opened at any time except in the presence of the commissioner and the president or authorized agent of the insurer, unless by order of a court of competent jurisdiction. The insurance company shall pay the fees of the safe-keeping of the same. So long as the company so depositing shall continue solvent the commissioner shall permit such company to collect and receive the interest and dividends on its securities so deposited, and from time to time to withdraw any of such securities on depositing other securities of at least equal value. The value and sufficiency of said securities shall be determined by the commissioner. If the commissioner willfully fails, refuses or neglects to faithfully keep, deposit, account for or surrender in the manner herein provided any of such securities in his custody under the provisions of this title, or willfully fails, refuses or neglects to furnish proper certificates of the securities so held by him as herein provided, he shall be responsible upon his official bond, and suit may be brought upon said bond by any person injured.

### **31-16-3. Nature of Required Deposits.**

All such deposits shall consist of certificates of deposit or United States or Canadian Government obligations, or state, county, municipal, or school obligations or revenue bonds, or any combination of such obligations or bonds.

### **31-16-5. Release of Deposited Securities—Grounds for Release—Procedure to Obtain Release—To Whom Release Made—Title Insurers.**

(1) Any such required deposit shall be released in these instances only:

(a) Upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by re-insurance contract or otherwise.

(b) If any such deposit or portion thereof is no longer required under this code.

(c) If the deposit has been made pursuant to section 31-14-9, it shall be released in whole or in part when no longer so required.

(d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer for whose account the deposit is held.

(e) If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this state then the commissioner shall deliver such assets and securities to such insurer or insurers so assuming such risks, upon (1) written notice to him by such domestic insurer that such assets and securities have been duly assigned, transferred and set over to such reinsuring insurer or insurers, which notice shall be accompanied by a duly verified copy of such assignment, transfer, or conveyance, and (2) in the case of deposits of the reserves of domestic insurers, proof satisfactory to the commissioner that the reinsuring insurer or insurers has deposited, or will deposit, and will maintain on deposit in public custody through the insurance supervisory official of its state of domicile, assets and securities of like quality in amount not less than the reserves then and thereafter of the policies and

contracts so reinsured, in addition to any other deposit of such insurer required or permitted by law.

(f) In case any insurer, which has made a deposit with the commissioner of insurance in this state of cash or securities in trust for the protection of its policyholders or creditors or both in this state, or of its policyholders or creditors or both in the United States, thereafter becomes merged or consolidated in accordance with the laws of this state if a domestic insurer, or in accordance with the laws of its domiciliary state or nation if a foreign or alien insurer, and upon the effectuation of the merger or consolidation, the resulting corporation is or becomes authorized to do business in this state, the commissioner, upon the resulting corporation's being so authorized, shall release and transfer the cash or securities so deposited by the merged or consolidated insurer to the resulting corporation or to such person as it may designate to take and receive the same.

(2) No such release shall be made except on application to and written order of the commissioner made upon proof satisfactory to him of the existence of one of such grounds therefor. The commissioner shall have no personal liability for any release of any such deposit or part thereof so made by him in good faith.

(3) All such release of deposits or any part thereof shall be made to the person then entitled thereto upon proof of title satisfactory to the commissioner.

(4) Deposits held on account of title insurers are subject further to the provisions of chapter 25 of this code.

### **31-17-3. Solicitor Defined.**

"Solicitor" means any individual authorized by an agent to solicit applications for insurance on behalf of such agent and to collect premiums in connection therewith. An individual employed by, and devoting full time to clerical work with incidental taking of insurance applications and receiving premiums in the office of, the agent is not deemed to be a solicitor if his compensation is not related to the volume of such applications, insurances, or premiums.

### **31-17-6. Applications for License—Manner and Form—Violation—Penalty.**

(1) Application for any such license shall be made to the commissioner in manner and upon forms as prescribed and furnished by him. As a part of or in connection with any such application the applicant shall furnish information concerning his identity, personal history, experience, business record, purposes, and such other information as the commissioner may reasonably require.

(2) Any person willfully misrepresenting any fact required to be disclosed in any such application shall be liable to penalties as provided in section 31-17-50.

**31-17-9. Qualification of Applicant for License—Issuance or Refusal of License.**

(1) To qualify for an agent's or broker's license an applicant must otherwise comply with this code therefor and must:

- (a) be above the age of twenty-one years;
- (b) be a bona fide resident of and actually reside in this state, except as provided in section 31-17-34 hereof;
- (c) successfully pass any examination as required under section 31-17-44 or 31-17-47 hereof;
- (d) be a trustworthy person;
- (e) not intend to use or use the license for the purpose principally of writing controlled business, as defined in section 31-17-23 hereof;
- (f) if for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license;
- (g) if for broker's license, shall have been previously licensed, either as an agent, solicitor, adjuster, broker or an employee of insurers or representatives of insurers, or special education or training of sufficient duration and extent reasonably to satisfy the commissioner that he possesses the competence necessary to fulfill the responsibilities of broker.
- (h) if for an agent's license, not intend to use or use the license for the purpose principally of signing or countersigning insurance contracts or policies for others.

(2) If the commissioner finds that the applicant is so qualified and that the license fee has been paid, he shall issue the license. Otherwise, the commissioner shall refuse to issue the license.

**31-17-10. Appointment of Agent by Insurer—Procedure—Notice to Commissioner—Filing Fee—Mailing Copy of Appointment to Agent—Duration of Appointment—Expiration and Renewal Appointment.**

(1) Each insurer on appointing an agent in this state shall file written notice thereof in duplicate with the commissioner on forms as prescribed and furnished by him, and shall pay the fee therefor as provided in section 31-14-1 of this code. If then licensed, or as soon as licensed, the commissioner shall mail one copy of the appointment to the agent.

(2) Each such appointment shall continue in force until:

- (a) the commissioner notifies the insurer that the agent's license is terminated or revoked; or
- (b) the appointment is revoked by the insurer by written notice of revocation filed with the commissioner on forms as prescribed and furnished by him, and by written notice to the agent (no fee shall be charged for filing notice of revocation); or
- (c) the insurer fails to renew the appointment as required by paragraph (3) of this section.

(3) Each such appointment shall expire as at 12:01 o'clock a.m. on the first day of April of the following calendar year unless prior thereto the insurer has filed with the commissioner its renewal of the appointment into the ensuing twelve month period and has paid the renewal fee as provided in section 31-14-1 hereof. Prior to such first day of April



the insurer shall file with the commissioner a statement listing all its agency appointments in this state which are to be so renewed, and listing separately all its agency appointments in this state not to be renewed. As to each such appointment not to be renewed, the insurer shall at the same time file with the commissioner proof, in form as prescribed by him, that the insurer has given notice to the agent that the appointment will not be renewed.

**31-17-11. License—Form—And Contents—Separate Licenses—Not Required—Expiration.**

Agents', solicitors', and brokers' licenses shall be in form as the commissioner prescribes, and shall set forth:

- (1) the name and address of the licensee; or if he is required to have a place of business, the address of the place of business;
- (2) the kind or kinds of insurance the licensee is hereby licensed to handle;
- (3) if a solicitor's license, the name and address of the agent represented by the solicitor;
- (4) the conditions under which the license is granted;
- (5) the date of issuance and date of expiration of the license.

**31-17-13. Separate Licenses, When Required—When One Sufficient—Requirement of New License.**

(1) An agent is required to have but one license inclusive of all other kinds of insurance he is licensed to handle, regardless of the number of insurers for whom he is appointed as agent for such insurances or any of them.

(2) An agent may be authorized to handle kinds of insurance in addition to those included in an existing license only by issuance of a new license.

**31-17-14. Limited Licenses to Travel Insurance Agents.**

The commissioner may issue limited licenses to persons who shall act as such agents only as to:

- (a) transportation ticket policies of disability insurance or baggage insurance on personal effects; or
- (b) credit life and disability insurances when sold in conjunction with or as an integral part of an extension of credit; or
- (c) service type contracts such as issued by motor clubs to members, but not to include the transactions of vehicle insurance; or
- (d) bail bonds; or
- (e) mortgage guaranty insurance; or
- (f) credit insurance.

**31-17-15. License Must Include, and Applicant be Qualified for—Certain Designated Kinds of Insurance.**

Except as provided in sections 31-17-10.5 and 31-17-14 hereof, an agent's license shall not be issued unless it includes, and the applicant is

qualified for, insurances according to any one of the kinds and combinations as follows:

- (1) Life;
- (2) Annuity;
- (3) Disability;
- (4) Marine;
- (5) Property;
- (6) Vehicle;
- (7) Casualty;
- (8) Surety;
- (9) Credit;
- (10) Title;
- (11) Such other kinds of insurance as the commissioner shall recognize.

**31-17-16. Expiration of License—Renewal of License—Procedure to Obtain Renewal.**

(1) Agents', brokers', solicitors' and adjusters' licenses shall expire as at 12:01 a.m. o'clock on the first day of April next following date of issuance unless the licensee prior thereto has filed with the commissioner, on forms prescribed and furnished by him, a request for continuation of such license for an ensuing twelve month period. Such request must be accompanied by payment of the renewal fee as provided in section 31-14-1.

(2) Subject to the right of the commissioner to suspend, revoke or refuse to continue any license as provided in this code, such license may be continued into another twelve month period. An agent shall make and file renewal request on behalf of his solicitors.

(3) If request and fee for renewal of license is filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of five days after the commissioner has refused to renew the license and has mailed notice of such refusal to the licensee. Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.

**31-17-20. Extent of Licensee's Right to Write Insurance—Effect of Placing Kinds of Insurance Beyond Scope of License—Suspension or Revocation of License.**

(1) Licensees for the same kinds of insurance, excepting life or disability may, with the knowledge of the insured, occasionally place a risk, or any portion of a risk with one another, provided the risk involves a kind of insurance which both are licensed to procure or place.

(2) Except as provided in subparagraph (1) hereof, no person may be paid, promised, or receive any compensation on account of the procuring of applications for, or the placing of kinds of insurance which he himself is not then licensed to procure or place.

(3) The commissioner may suspend or revoke the licenses of all licensees participating in any violation of this section.

**31-17-23. License—Duty of Commissioner to Refuse—License to be Used to Secure Commission on Controlled Business—Definition and Nature of “Controlled Business”.**

(1) The commissioner shall not grant an agent's, solicitor's, or broker's license to any person if the commissioner has reasonable cause to believe that any such license has been or will be used by such person principally for the purpose of securing commissions upon controlled business.

(2) “Controlled business” means insurance procured or to be procured by or through such persons upon

(a) his own life, person, or property or those of his spouse or relatives by blood or marriage to the second degree, or any person who has been during the past six months his employer, either as an individual or as a member of a partnership, association, firm or corporation, or any person who during the past six months, has been his employee.

(3) A license shall be deemed to have been used or to be used principally for the purpose of controlled business if

(a) during either of the two calendar years immediately preceding the request for renewal of any such license the aggregate amount of commissions represented by the controlled business procured by or through the licensee exceeded the aggregate amount of commissions represented by all other insurance business procured by or through him; or if

(b) the circumstances of the applicant for such license or of any such licensee are such as to cause the commissioner reasonably to believe that during the twelve month period immediately following issuance of renewal of the license, if so issued or renewed, the aggregate amount of commissions to be represented by such controlled business would exceed the aggregate amount of commissions to be represented by all other insurance business to be procured by or through such applicant or licensee.

**31-17-24. Solicitor License—Qualifications of Applicant.**

The commissioner shall license as a solicitor an individual only who meets the following requirements:

- (1) Is a resident of this state.
- (2) Is to represent and be employed by but one licensed agent.
- (3) Has passed any examination as required under section 31-17-44.
- (4) Is otherwise qualified under this code.

**31-17-25. Issuance of Solicitor's License.**

The commissioner shall issue a solicitor's license only upon application by the applicant and request by the agent to be represented upon such forms as the commissioner shall prescribe and furnish.

**31-17-26. Fee for Issuance or Renewal of Solicitor's License—Delivery and Possession of License.**

(1) The fee for issuance or continuation of a solicitor's license shall be paid by the agent by whom the solicitor is employed.

(2) The solicitor's license shall be delivered to and shall remain in the possession of the employing agent.

**31-17-27. Manner in Which Solicitor to Transact Business—Liability of Agent or Broker for His Acts.**

All business transacted by a solicitor under his license shall be in the name of the agent by whom he is employed and the agent shall be responsible for all acts or omissions of the solicitor within the scope of such employment.

**31-17-28. Scope and Operation of Solicitor's License—Dual Licensing—Power of Solicitor.**

(1) A solicitor's license shall not cover any kind of insurance for which the agent by whom he is employed is not then licensed.

(2) A solicitor shall not have power to bind an insurer upon or with reference to any risk or insurance contract, or to countersign insurance contracts.

(3) Any individual while licensed as a solicitor shall not be licensed as an agent or broker.

**31-17-35. Appointment of Commissioner as Process Agent—Duties of Commissioner Upon Receiving Service.**

(1) Each licensed nonresident agent or broker shall appoint the commissioner as his attorney to receive service of legal processes issued against the agent or broker in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute effective legal service upon the agent or broker.

(2) Such appointment shall be irrevocable for as long as there could be any cause of action against the agent or broker arising out of his insurance transactions in this state.

(3) Duplicate copies of such legal processes against such agent or broker shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner the fee set forth in section 31-14-1, taxable as costs in the action.

(4) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent or broker at his last address of record with the commissioner.

(5) The commissioner shall keep a record of the day and hour of service upon him of all such legal processes. No proceedings shall be had against the defendant agent or broker, and such defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

**31-17-44. Licenses — Examination of Licensee — Applicants Excepted From the Requirement—Right of Commissioner to Require Submission to Examination.**

(1) Each applicant for license as agent, broker, solicitor, or adjuster shall prior to the issuance of any such license, personally take and pass to the satisfaction of the commissioner an examination given by the com-

missioner as a test of his qualifications and competence; but this requirement shall not apply to:

- (a) applicants for limited licenses under section 31-17-14 hereof;
- (b) applicants who have, within the two year period next preceding date of application, been licensed in this state under a license requiring qualifications similar to qualifications required by the license applied for and who are deemed by the commissioner to be fully qualified and competent;
- (c) applicants for license as nonresident agent or as nonresident broker who have fulfilled qualification requirements in their state of residence and who are deemed by the commissioner to be fully qualified and competent.
- (d) applications for an agent's or solicitor's license covering the same kinds of insurance as an agent's or solicitor's license thence held by them;
- (e) applicants who have been examined under the provisions of section 31-17-47;
- (f) officers of credit unions organized under state or federal laws, who receive no commissions but who act as agent for insurance companies to procure insurance only for the members of such credit unions.

(2) Applicants for the renewal of licenses shall not be required to take an examination except as provided in paragraph (3) of this section.

(3) The commissioner may at any time require any licensed agent, broker, solicitor, or adjuster to take and successfully pass an examination testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been guilty of violation of this code, or has so conducted his affairs under his license as to cause the commissioner reasonably to desire further evidence of his qualifications.

#### **31-17-45. Character and Extent of Examination—Time and Place—Right to Reexamination—Fee.**

(1) Each such examination shall be as the commissioner prescribes and shall be of sufficient scope reasonably to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state applicable to, such licensee. The examination of applicants for agent's or solicitor's license to sell only that insurance issued by a company doing business under the provisions of chapter 21 of this code, shall be adapted to the scope of insurance risks dealt with by such company. In preparing such examination the commissioner shall consult a representative of such companies.

(2) Examination as to ocean marine and related coverages may be waived by the commissioner as to any applicant who in good faith does not intend to deal in, and does not under the license deal in such insurances, or as to any applicant deemed by the commissioner to be qualified by past experience to deal in such insurances.

(3) The commissioner shall prepare and make available to insurers, brokers, agents, and applicants a printed list of manuals and text books

which are reasonably available, which cover in general terms the subjects which may be covered in any examination for a particular license.

**31-17-47. Examinations Given and Supervised by Insurer—Conduct and Character of Examination—Withdrawal of Privilege of Giving Examination.**

An applicant for license as agent may, in lieu of examination by the commissioner, take and pass a similar examination given and supervised by a university, school or insurer, if the following conditions are complied with:

(1) The university, school or insurer must have filed with and have approved by the commissioner, an outline of the course of study and instructions to be given such applicants in good faith by or on behalf of the university, school or insurer.

(2) The applicant must have completed such course.

(3) The examination must be in writing and be taken by the applicant in person and without aid, and the questions and answers thereto must be kept on file as required by the commissioner.

(4) The official or representative of the university, school or insurer in charge of the examination must certify to the commissioner the results thereof and grade received prior to the issuance of the license applied for.

The commissioner may at any time withdraw from such university, school or insurer the privilege of giving examinations as provided in this section and may re-examine at any time any applicant or agent previously given an examination by such university, school or insurer.

**31-17-50. Licenses—Suspensions—Revocation or Denial—Grounds.**

The commissioner may suspend, revoke, or refuse to renew any license issued under this chapter or any surplus line broker's license as provided for in chapter 15 of this code, for any cause specified in any other provision of this code, or for any of the following causes:

(a) for any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) if the licensee willfully violates or knowingly participates in the violation of any provision of this code;

(c) if the licensee has obtained or attempted to obtain any such license through willful misrepresentation for fraud, or has failed to pass any examination required under this chapter;

(d) if the licensee has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity;

(e) if the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;

(f) if the licensee has been guilty of "twisting," or of rebating, as defined in chapter 27 of this code;

(g) if the licensee has been convicted, by final judgment, of a felony;

(h) if in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, a source of injury and loss to the public;

(i) if the licensee has dealt with, or attempted to deal with, insurances or to exercise powers relative to insurance outside the scope of his licenses.

**31-18-1. Kinds of Insurance to Which Chapter Applicable or Unapplicable.**

The provisions of this chapter apply to: (1) casualty insurance, on risks or operations in this state, and to property, surety, vehicle, marine and transportation, and title insurance as defined in this code, on risks located in this state.

(2) Property, marine and transportation insurance, in their generally accepted trade sense, shall not include motor vehicle insurance or insurance against liability arising out of the ownership, maintenance or use of motor vehicles.

(3) The provisions of this chapter shall not apply to: re-insurance, other than joint re-insurance to the extent stated in 31-18-10 of this chapter; life and disability insurance; annuities; risks commonly insured under ocean marine policies; insurance against loss of or damage to aircraft or against liability arising out of the ownership, maintenance or use of aircraft, nor to insurance of hulls of aircraft, including their accessories and equipment.

(4) If any kind of insurance, subdivision or combination thereof, or type of coverage, is subject to both the provisions of this chapter expressly applicable to casualty insurance and to those expressly applicable to property, marine and transportation insurance, an insurer to which both these provisions are otherwise applicable shall file with the commissioner a designation as to which of these provisions shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage.

**31-18-2. Rates—Manner of Making—Adequacy or Excessiveness—Casualty Insurance Rates—Classification of Risks for Rating—Fire Insurance—Marine and Transportation Insurance.**

All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(2) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(3) Rates for casualty insurance to which this chapter applies shall also be subject to the following provisions:

(a) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof

for which subdivision or combination separate expense provisions are applicable.

(b) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) Rates for property, marine, and transportation insurance to which this chapter applies shall also be subject to the following provisions:

(a) Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated.

(b) Due consideration shall be given to the conflagration hazards, and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

(5) Except to the extent necessary to meet the provisions of subsection (2) of this section uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

### **31-18-3. Manual of Classifications, Rules and Rates—Filing With the Commissioner—Requisites and Sufficiency of Filing—Suspension or Modification of Requirement of Filing.**

(1) (a) Every insurer shall file with the commissioner every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use for casualty insurance to which this chapter applies.

(b) Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule and every modification of any of the foregoing which it proposes to use for property, marine and transportation insurance to which this chapter applies. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(2) Every such filing shall state the proposed effective date thereof, which shall not be less than fifteen days after said filing, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of the act, he may require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (1) the experience or judgment of the insurer or rating organization making the filing, (2)



its interpretation of any statistical data it relies upon, (3) the experience of other insurers of rating organizations, or (4) any other relevant factors. A filing and supporting information shall be open to public inspection after the filing is made.

(3) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided, that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(4) Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in section 31-18-2(2).

(5) Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risks.

(6) Beginning ninety days after the effective date of this code no insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this chapter or in accordance with subsection (4) or (5) of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required.

**31-18-5. Rating Organization—Application for License—Contents—Issuance of License—Duration—Fees—Notification to Commissioner of Changes in Constitution, Articles or Membership.**

(1) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivisions or a class of risks, or part or combination thereof as are specified in its application and shall file therewith (a) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, or trust agreement, and by-laws, rules and regulations governing the conduct of its business, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and (d)

a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, or trust agreement and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance, or subdivision or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him. License issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be twenty-five dollars annually. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in (a) its constitution, its articles of agreement, or association, or its certificate of incorporation, or trust agreement, and its by-laws, rules and regulations governing the conduct of its business, (b) its list of members and subscribers, and (c) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

#### Rules and Regulations of Organization, Review of Refusal of Subscribership.

(2) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner, as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a

subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

#### Restriction on Rules.

(3) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payments of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

#### Cooperation between Rating Organizations Permitted.

(4) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

#### Examination of Insurance Documents, Correction of Errors.

(5) Any rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidence of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

#### Data Available to All Subscribers.

(6) Any rating organization may subscribe for or purchase actuarial, technical, or other services, and such services shall be available to all subscribers without discrimination.

### **31-19-2. Insurance Contracts—Capacity to Contract—Minors—Fiduciaries.**

(1) Any person of competent legal capacity may contract for insurance.

(2) Any minor not less than fifteen years of age at nearest birthday may, notwithstanding such minority, contract for annuities and for life or disability insurance on his own life or body, or on the person of another in whom the minor has an insurable interest. Such minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under (a) any contract for annuity or for insurance upon his own life or body, or (b) any contract such minor effected or owns on the person of another, issued to the minor as above described, as though of full legal age, and may sur-

render his interest therein and give a valid discharge for any benefit accruing or money payable thereunder. Such minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate such contract, or any exercise of a right or privilege thereunder; except, that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise, any premium on any such insurance contract.

(3) The guardian or trustee of the estate of any minor may invest the funds of such estate in the purchase of life, health or accident insurance or annuity contracts, insuring such minor, in any form issued by insurance companies authorized to do business in the state of Utah, without personal liability therefor on the part of said guardian or trustee, provided that the application for the purchase of such insurance or annuity contracts be approved by the court in which such guardianship or trusteeship is pending.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2) of this section, shall be made payable either to the minor or to his estate, or to a person having an insurable interest in the life of the minor.

(5) The provisions of subsection (2) of this section shall also be applicable with respect to property, casualty and surety insurance contracted for by any such minor upon his own property, liabilities or other interests.

#### **31-19-5. Life or Disability Insurance—Written Consent of Insured—Exception—Group Insurance—Husband and Wife—Children.**

No life or disability insurance contract upon an individual, except a contract of group insurance or of group or blanket disability insurance as defined in this Code, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, in writing applies therefor or consents thereto, except in the following cases:

(a) A spouse may effectuate such insurance upon the other spouse.

(b) Any person having an insurable interest in the life of a minor or any person upon whom a minor is dependent for support and maintenance, may effectuate insurance upon the life of or pertaining to such minor.

(c) Family policies may be issued insuring any two or more members of a family on any application signed by either parent, step-parent, or by a husband or wife.

#### **31-19-7. Application for Insurance to be Attached to Contract.**

(1) No application for the issuance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of such application was attached to, or otherwise made a part of the policy or contract when issued. This provision shall not apply to industrial life insurance policies.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request, the insurer shall, within thirty days after receipt of such request at its home office, deliver or

mail to the person making such request a copy of such application reproduced by any legible means. If such copy is not so delivered or mailed after having been so requested, the insurer shall be precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of such a request from a beneficiary, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

**31-19-13. Companies Writing Workmen's Compensation and Occupational Disease Insurance—State Insurance Fund—Jurisdiction and Powers of Industrial Commission—Rates.**

All insurance companies writing workmen's compensation insurance and occupational disease insurance in this state, and the commission of finance in connection with its administration of the state insurance fund, shall be subject to the rules and regulations of the industrial commission as to claims for and payment of compensation and benefits. With respect to workmen's compensation and occupational disease insurances the filings by insurance companies of policy forms as required by section 9 of this chapter and of rates as required by chapter 18, shall be with and under the supervision of the insurance commissioner. The insurance commissioner shall, notwithstanding the provisions of chapter 18, provide for uniform rates, classifications and rules; and promulgate rating plans to be used by such insurance companies which need not be uniform with those fixed for the state insurance fund.

**31-19-29. Insurance Policies—Assignment of—Right of Insurer to Deal With Assignee.**

A policy may be assignable or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or disability policy, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

**31-19-30. Payment or Discharge of Policy—Who Entitled to Receive Proceeds or Payments.**

Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract, or the exercise of any right or privilege thereunder, and the insurer makes payment thereof in accordance with the terms of the policy, or contract or in accordance with any written assignment thereof, the

person then designated in the policy or contract or by such assignment as being entitled thereto, shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

**31-19-31. Right of Minor to Receive Payments, and to Give Acquittance and Discharge—Incompetent to Alienate or Anticipate Payments.**

(1) Any minor domiciled in this state who has attained the age of eighteen years, shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amounts not exceeding three thousand dollars, in any one year, made by a life insurer under the maturity, death or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, if such policy, contract or agreement provides for payment of such minor. No such minor shall be deemed competent to alienate the right to, or to anticipate or commute, such payments. This section shall not be deemed to restrict the rights of minors set forth in sections 31-19-2.

(2) If a guardian of the property of any such minor is duly appointed and written notice thereof is given to the insurer at its home office, any such payment thereafter falling due shall be paid to the guardian for the account of the minor, unless the policy or contract under which the payment is made expressly provides otherwise.

(3) This section shall not be deemed to require any insurer making any such payment to determine whether any other insurer may be effecting a similar payment to the same minor.

**31-21-1. Creation of Non-Profit Corporation—What Charter Governs—Restriction Upon Issuance of Policies.**

Fifty or more persons residing in this state, who collectively own property of not less than \$100,000 in value which they desire to have insured, may incorporate for the purpose of mutual insurance against loss or damage by fire or lightning under the provisions of Title 16, chapter 6, Utah Code Annotated 1953, relating to nonprofit corporations; and all the rights, privileges and powers and all the duties and obligations of such corporations and of the officers and members thereof shall be as provided in said chapter 6, except as otherwise provided in this chapter. In no case shall the policies of such company become effective until \$100,000 of insurance shall have been written.

**31-21-18. General Provisions Do Not Apply.**

Chapters 2, 3, 4, 13, 17, 27, 28 and sections 9, 10, 11 and 12 of chapter 19, and the agent's, solicitor's, and adjuster's licensing and examination fees provided for in section 31-14-1 of this code, and as in this chapter otherwise provided, shall apply to companies doing business under this chapter, and the balance of the chapters of this code shall not be applicable to such companies doing business under this chapter.

**31-25-1. Guarantee Fund Deposit—Conditions Precedent to Issuance of Policy.**

Every title insurer, before issuing any title policy for a cash insurance premium must deposit with the commissioner of insurance or other designated official of its home state a sum of \$150,000 which deposit shall be known as a guarantee fund and shall be so held as hereinafter provided for the security and protection of the holders of or beneficiaries under its title policies. Upon making such a deposit a domestic title insurer shall be permitted to carry on a title insurance business in this state and a foreign title insurer upon making such deposit and otherwise qualifying under the laws of this state relating to foreign corporations, shall be entitled to carry on a title insurance business.

**31-25-2. Securities Acceptable.**

Such guarantee fund deposit shall consist of certificates of deposit or United States or Canadian Government obligations, or state, county, municipal, or school obligations or revenue bonds, or any combination of such obligations or bonds.

**31-25-6. Amount of Paid-in Capital Required.**

A title insurer shall not transact any insurance in this state unless it has a paid-in capital represented by shares of stock of at least \$150,000.

**31-25-10. Materials and Plant—Statement of Condition of Insurer.**

Any such domestic insurer, after having its required capital paid in and depositing its required guarantee fund with the commissioner of insurance may invest an amount not exceeding fifty per cent of its paid-in capital stock in the preparation and purchase of materials and plant necessary to enable it to engage in the title insurance business. In all statements and proceedings required by law for the ascertainment and determination of the condition of such insurer, such materials and plant shall be treated in one of the following ways:

(1) They may be treated as an asset, valued at actual cost of the insurer.

(2) They may be treated as an asset, at such lesser value than cost as the insurer estimates.

(3) They may be omitted entirely from the statement or proceeding.

**31-25-11. Dividends**

A title insurer shall not pay any dividends except from profits remaining on hand after retaining unimpaired assets aggregating in value an amount equal to the sum of the following:

(1) the entire paid-in capital stock;

(2) the amount set apart as the unearned premium reserve fund;

(3) a sum sufficient to pay all liabilities for expenses and taxes, and all losses reported or in course of settlement, without impairment of the amount required to be set apart as the unearned premium reserve fund.

**31-25-13. Reinsurance Upon Withdrawal of Insurer.**

Whenever a title insurer, upon withdrawing from insurance business in this state, desires to reinsure its policies with a title insurer whose unearned premium reserve fund is not fully made up, the commissioner

shall require the re-insurer to increase its unearned premium reserve fund not greater than will fully make up the re-insurer's unearned premium reserve fund. Such increase may be made a condition of the commissioner's approval of the re-insurance.

**31-25-16. General Insurance Laws, and Rules and Regulations Applicable.**

Such title insurer shall be subject to and shall comply with all the requirements of the insurance laws and the rules and regulations of the commissioner.

**31-26-1. Compliance With Local Law.**

No other state or alien insurance company shall transact any business in the state until it has the qualifications provided in chapter 5 of this code and in addition shall have filed in the office of the commissioner and in the office of the secretary of state:

(1) a copy of its articles of incorporation or association or other corresponding document and of all by-laws and all amendments and alterations, duly certified in the same manner as is required of similar papers by section 31-5-6 (2), respecting foreign corporations;

(2) a copy of its acceptance of the provisions of the Constitution and laws of this state;

(3) a copy of a resolution or other instrument designating the location of its principal place of business in this state;

(4) a power of attorney duly signed and sealed, appointing the commissioner and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and consenting that service of process upon the commissioner shall be taken and held as valid service upon the company, and that the authority shall continue in force so long as any liability may remain outstanding in this state against it;

(5) a statement under oath of the president and secretary or other chief officers of the company showing the condition of the affairs of such company on the 31st day of December next preceding, which statement shall be in the same form and shall set forth the same particulars as the annual statement required by section 31-5-21.

**31-26-2. Alien Insurance Companies — Deposit With Commissioner — Condition Precedent to Doing Business.**

No foreign insurance company shall be admitted to do business in this state until besides complying with the insurance laws of this state it shall have deposited with the commissioner of insurance of this state, or with the duly authorized officer of some other state of the United States in which said insurer is authorized to transact insurance business, a sum not less than the amount of the capital or guaranty fund required under this code to transact such kind or kinds of insurance for which such authorization is sought. Such deposit must be an exclusive trust for the benefit and security of all the company's policyholders or policyholders and creditors and may be made in securities of the kind specified in chapter 16 for the investment of the capital and guaranty fund of insurance companies.



**31-27-1. Unfair Competition—Regulations—Penalties.**

(1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts or practices are defined in this chapter.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated only after a hearing thereon, define other methods of competition and other acts and practices in the conduct of such business reasonably found by him to be unfair or deceptive.

(3) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order on hearing by which it is promulgated.

(4) Any person violating any such regulation shall be guilty of a misdemeanor. If such violator is an insurer or a licensee under this code, the commissioner may also revoke, suspend, or refuse to renew or continue the violator's certificate of authority or license.

**31-27-15. Offering Securities, Contracts, Goods or Merchandise as Inducements.**

No insurer, agent, broker, solicitor, or other person, shall, as an inducement to the purchase of an insurance or annuity contract, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, or offer or promise to buy or give, or promise, or allow, in any manner whatsoever:

(1) any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto; or

(2) any special advisory board contract, or other contract, agreement, or understanding, of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) any prizes, goods, wares, or merchandise of an aggregate value in excess of one dollar; or

(4) any paid employment or contract for services of any kind.

**31-27-22. Discrimination Between Risks of Same Class Forbidden—Penalty—Revocation of Certificate of Authority.**

(1) No insurer shall make or permit any unfair discrimination in favor of particular individuals or persons, between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in the dividends or other benefits payable thereunder.

No insurer, admitted or non-admitted, shall make available through any rating plan or form, fire, casualty or surety insurance to any firm, corporation or association of individuals, any preferred rate or premium based upon any fictitious grouping of such firm, corporation or association of individuals. No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside this state to cover resident persons or risks at any preferred rate or form other than that offered to persons not in such

group, and the public generally, unless such form, plan or policy and the rates or premiums to be charged therefor have been submitted to and approved by the commissioner as not in conflict with this chapter or section 31-18-2 of this code. This subsection shall not apply to life, accident, health and hospitalization policies or annuity contracts.

(2) It shall be the duty of the commissioner, upon being satisfied that any insurance company or any agent thereof has violated any of the provisions of the section, to revoke the certificate of authority of the company or agent so offending, and no authority shall be issued to such company or agent within six months from date of such revocation.

#### **31-29-4. General Provision of Insurance Laws Do Not Apply.**

Except as herein provided, such societies shall be governed by this chapter and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein. But if such society issues insurance to nonmembers, other than dependents of members, or other than as provided in this chapter, it shall be subject to the insurance laws of this state as a mutual insurer, and not to the provisions of this chapter, after January 1, 1964.

#### **31-31-2. Mutual Benefit Association Requirements.**

Any mutual benefit association shall not receive a certificate of authority from the commissioner of insurance, nor shall such association issue any certificate of membership, until a minimum of 300 persons have applied in writing to said association for membership and benefits therein, or until \$200,000 of insurance benefits have been applied for, and until said association has on deposit in a bank or trust company, authorized to do business in this state, an amount which shall be known as a benefit fund, and which shall be equal to, and not less than \$1 for each \$1,000 of maximum insurance in force in the association; said benefit fund shall not be less than the largest benefit to be paid by the association to any one member, and in no case shall the said benefit fund be less than \$500; provided, that said benefit fund, in the case of a new association, shall be determined on the basis of the maximum insurance in force as reported in the last annual statement of the association to the commissioner of insurance except in cases where the association suffers material membership losses during the year. No benefit to any one member in an association shall exceed the sum of \$3,000, except as provided in section 31-31-11. All associations now authorized to do business in this state shall have a period of 180 days from the effective date of this chapter in which to comply with the above provisions, and in the event of failure to comply herewith, shall submit to revocation of its authority to do business. No money, membership fees, dues, assessments, or contributions shall be collected from prospective members by any officers, employees, agents, or organizers of such association until the bonds provided for in the next succeeding section have been executed as provided for.

**31-31-5. Annual Registration Fees—Payment of.**

Every association organized under this chapter shall pay to the insurance commissioner annually the following registration fees in advance:

Associations having fewer than 1,000 members, \$25.

Associations having 1,000 or more members and not over 2,500 members, \$50.

Associations having 2,500 or more members and not over 5,000 members, \$75.

Associations having 5,000 members and over, \$100.

**31-31-15. Exceptions From Other Provisions of Code.**

Except as otherwise clearly provided by this chapter, every mutual benefit association shall be subject to the other provisions of this code unless the context clearly indicates non-applicability to such association.

**31-33-2. Policy Specifications—Enumerations—Policy Written by Domestic Insurer for Issuance Out of State.**

(1) No policy of individual accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

(a) The entire money and other considerations therefor are expressed therein; and

(b) The time at which the insurance takes effect and terminates is expressed therein; and

(c) It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children and any other person dependent upon the policyholder, and

(d) The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

(e) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in this act, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS," or "EXCEPTIONS AND REDUCTIONS," provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(f) Each such form including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(g) It contains no provision purporting to make any portion of the charter, rules, constitution, or by-laws of the insurer a part of the

policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

(2) If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in this act.

### **31-33-6. Grace Period—Cancellation—Right to Refuse—To Renew.**

A grace period of \_\_\_\_\_ (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision the following statement: Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.

### **Section 2. Sections Enacted.**

New sections of The Insurance Code, to be known as sections 31-2-3.5, 31-3-4.5, 31-3-8, 31-5-2.5, 31-5-3.5, 31-5-8.5, 31-14-1, 31-14-9, 31-15-17, 31-15-18, 31-15-19, 31-15-20, 31-17-10.5, 31-18-6, 31-19-8, 31-20-1, 31-20-2, 31-20-3, 31-20-4, 31-20-5, 31-20-6, 31-20-7, 31-20-8, 31-20-9, 31-22-1, 31-22-2, 31-22-3, 31-22-4, 31-22-5, 31-22-6, 31-22-7, 31-22-8, 31-22-9, 31-22-10, 31-22-11, 31-22-12, 31-22-13, 31-22-14, 31-22-15, 31-22-16, 31-22-17, 31-22-18, 31-23-1, 31-23-2, 31-23-3, 31-23-4, 31-23-5, 31-23-6, 31-23-7, 31-23-8, 31-23-9, 31-23-10, 31-23-11, 31-23-12, 31-23-13, 31-23-14, 31-23-15, 31-23-16, 31-23-17, 31-25-8, 31-27-9, 31-27-14, 31-29-35.5, 31-31-10, 31-35-1, 31-35-2, 31-35-3, 31-35-4, 31-35-5, 31-35-6, and 31-36-1, 31-36-2, 31-36-3, 31-36-4, 31-36-5, 31-36-6, are enacted to read:

#### **31-2-3.5. Commissioner to Make Rules and Regulations.**

(1) The commissioner may make reasonable rules and regulations necessary for, or as an aid to, the effectuation of any provision of this code. No such rule or regulation shall conflict with any law of this state or the reasonable implications thereof.

(2) Any such rule or regulation affecting persons or matters other than the personnel or the internal affairs of the department shall be made or amended only after a hearing thereon of which notice has been given as required by section 31-4-4. If reasonably possible, the commissioner shall set forth the proposed rule or regulation or amendment in or with the notice of hearing.

(3) No such rule or regulation as to which a hearing is required under subsection (2) of this section shall be effective until after it has

been on file as a public record in the commissioner's office for not less than ten days.

(4) Upon request and payment of the reasonable cost thereof, if required and fixed by the commissioner, the commissioner shall furnish a copy of any such rule or regulation to any person so requesting.

(5) In addition to any other penalty provided, willful violation of any such rule or regulation shall subject the violator to such suspension or revocation of certificate of authority or license as may be applicable under this code as for violation of the provision as to which such rule or regulation relates.

#### **31-3-4.5. Commissioner to Appoint Examiners.**

For the conduct of or assistance in examinations under this chapter the commissioner shall appoint as examiners only individuals who by reason of education and experience or special training are competent to perform the duties and fulfill the responsibilities of an insurance examiner. In the selection of examiners the commissioner shall give due consideration to standards and qualifications therefor recommended by the National Association of Insurance Commissioners, or any successor organization thereto.

#### **31-3-8. Hearings for Violation of Code.**

(1) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the commissioner, his deputy or examiner, or in any proceeding or action before any court or magistrate upon a charge of violation of this code, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must, if so directed by the commissioner and the attorney general, nonetheless comply with such direction; but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence shall be received against him in any criminal action, investigation or proceeding; except, however, that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning such perjury; nor shall he be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred or to be conferred, pursuant to this code.

(2) Any such individual may execute, acknowledge and file in the department a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statements, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court or tribunal, magistrate, grand jury or otherwise, and if so received or produced, such individual shall

not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

**31-5-2.5. Commissioner to Issue Certificate of Authority to Domestic Stock Insurer.**

The commissioner shall not issue a certificate of authority to any domestic stock insurer unless it has deposited in trust with the insurance department cash or the securities described in section 31-16-3 in an amount not less than the minimum paid-in capital stock required pursuant to this code to be maintained for authority to transact the kinds of insurance to be transacted, except:

(1) As to title insurers, the deposit shall be as required by chapter 25, title 31, of this code.

(2) As to domestic stock insurers duly qualified to transact insurance in this state pursuant to a valid certificate of authority in full force and effect on the effective day of this act, the deposit required shall be cash or the securities described in section 31-16-3 in an amount not less than the minimum capital required of the said insurer under section 31-11-1.

**31-5-3.5. Commissioner Not to Grant Authority After Hearing.**

The commissioner shall not grant or continue authority to transact insurance in this state as to any insurer, the management of which is found by him, after a hearing held thereon, to be untrustworthy, or so lacking in insurance experience as to make the proposed operation hazardous to the public.

**31-5-8.5. Certificate of Authority to Continue in Force—Conditions.**

(1) A certificate of authority shall continue in force as long as the insurer is entitled thereto under this code and until suspended or revoked by the commissioner, or terminated at the request of the insurer; subject, however, to continuance of the certificate by the insurer each year by:

(a) Payment prior to March 1 of the continuation fee provided in section 31-14-1; and

(b) Due filing by the insurer of its annual statement for the calendar year preceding as required under section 31-5-21; and

(c) Payment by the insurer of premium taxes with respect to the preceding calendar year as required by section 31-14-4.

(2) If not so continued by the insurer, its certificate of authority shall expire as of midnight on March 31st next following such failure of insurer to continue it in force. The commissioner shall promptly notify the insurer of the occurrence of any such failure which may result in expiration of its certificate of authority.

(3) The commissioner may, in his discretion, upon the insurer's request made within three months after expiration reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in its expiration, and upon payment by the insurer of the fee for reinstatement specified in section 31-14-1. Otherwise, the insurer shall be granted

another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

### 31-14-1. Fee Payable.

The commissioner shall collect in advance the following fees for:

Filing all necessary papers for original entry to do business in the state of Utah, including original certificate of authority	\$150.00
Continuation of certificate of authority (annual)	25.00
Reinstatement of certificate of authority	50.00
Filing of amendments to articles of incorporation, charter or by-laws	10.00
Filing annual statement and report of Utah business	50.00
Preparing synopsis and certification of annual statement	5.00
Filing application for stock solicitation permit	15.00
Issuing stock solicitation permit	10.00
License to solicit under stock solicitation permit, each	5.00
Filing any power of attorney, document or paper not otherwise provided herein	1.00
Copy of papers filed in department, per page	.25
Affixing commissioner's seal and certifying any paper	1.00
Agent's license, or renewal, per year or fraction thereof, each	5.00
Non-resident agent's license, or renewal, per year or fraction thereof, each	10.00
Appointment certificate of agent, or renewal, per year or fraction thereof, each	2.00
Solicitor's license, or renewal, per year or fraction thereof. each	3.00
Broker's license, resident or non-resident, or renewal, per year or fraction thereof, each	100.00
Surplus line broker's license, or renewal, per year or fraction thereof, each	25.00
Adjuster's license, or renewal, per year or fraction thereof, each	10.00
Accepting service of legal process	2.00
Examination for agent's, solicitor's, broker's or adjuster's license, \$5.00 per class of insurance; maximum for any one examination	10.00

### 31-14-9. Reciprocity Provisions.

(1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Utah insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such

other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Utah. Any tax, license or other obligations imposed by any city, county or other political subdivision or agency of such other state or country on Utah insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(2) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property, nor as to special purpose obligations or assessments in connection with particular kinds of insurance, except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

(3) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, or a province thereof, shall be in that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within six months after the effective date of this code, whichever date is the later, and may be any one of the following states:

(a) That in which the insurer was first authorized to transact insurance;

(b) That in which is located the insurer's principal place of business in the United States;

(c) That in which is held the largest deposit of trustee assets of the insurer for the protection of its policyholders and creditors in the United States. If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

(d) In the case of an insurer formed under the laws of Canada, or a province thereof, its domicile shall be deemed that province in which its head office is situated.

### **31-15-17. Voiding Contract of Insurance.**

A contract of insurance effectuated by a nonadmitted insurer in violation of the provisions of this code shall be voidable except at the instance of the insurer.

### **31-15-18. Marking Surplus Line Contracts.**

Every insurance contract procured and delivered as a surplus coverage pursuant to this chapter shall have stamped upon it, and be initialed by, or bear the name of, the surplus line broker who procured it, the following: "This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Utah."



**31-15-19. Exceptions to Act.**

The provisions of this chapter controlling the placing of insurance with nonadmitted insurers shall not apply to:

- (1) Any person residing in this state in placing, negotiating or effecting insurance on his own person or property;
- (2) Reinsurance;
- (3) Ocean marine and trade insurances;
- (4) Insurance on operations of railroads engaged in transportation in interstate commerce, and their property used in such operations;
- (5) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

**31-15-20. Nonadmitted Insurer—Service of Legal Process.**

(1) A nonadmitted insurer shall be sued, upon any cause of action arising in this state under any contract issued by it as a surplus line contract, pursuant to this chapter, in the district court of the county in which the cause of action shall arise.

(2) Service of legal process against the nonadmitted insurer may be made in any such action by service upon the commissioner. The commissioner shall forthwith mail the document of process served, or a true copy thereof, to the person designated by the nonadmitted insurer in the policy for that purpose by prepaid registered mail, with return receipt requested. The nonadmitted insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the nonadmitted insurer.

(3) A nonadmitted insurer issuing such policy shall be deemed thereby to have authorized process against it in the manner, and to the effect, as provided in this section. Any such policy shall contain a provision stating the substance of this section, and designating the person to whom the commissioner shall mail process as provided in subsection (2) of this section.

**31-17-10.5. Appointment Certificate.**

(1) An insurer may appoint a firm or corporation as its agent but on the written notice shall designate each individual who is to exercise the powers to be conferred by the appointment upon such firm or corporation, and only the persons so designated may exercise such powers. The commissioner shall require each such designated individual to be properly qualified with a license.

(2) An appointment certificate shall not be issued to an agent, firm or corporation unless the individual or individuals have qualified to write all the kinds of insurance which are authorized and actually being written in this state by the insurer making such appointment, excepting life, annuity and disability insurances.

**31-18-6. Rating Organization—Requirements—Deviation.**

(1) Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may make written application to the commissioner to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance, or combination thereof. Such application shall specify the basis for the modification and a copy shall also be sent simultaneously to such rating organization. In considering the application to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 31-18-2. The commissioner shall issue an order permitting the deviation for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that the deviation applied for does not meet the requirements of this chapter.

(2) Each deviation permitted to be filed shall remain in effect for a period of not less than one year from the effective date unless sooner withdrawn by the insurer with the approval of the commissioner or until terminated in accordance with the provisions of section 31-18-4.

**31-19-8. Misrepresentation—Warranties—Presumption and Burden of Proof.**

(1) All statements and descriptions in any application for an insurance policy or annuity contract, or for the reinstatement or renewal thereof, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless:

(a) fraudulent; or

(b) material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

(c) The insurer in good faith either would not have issued the policy or contract, or would not have issued, reinstated or renewed it at the same premium rate, or would not have issued, reinstated, or renewed a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

(2) If, in any action to rescind any policy or contract or to recover thereon, any misrepresentation with respect to a medical impairment is proved by the insurer, and the insured or any other person having or claiming a right under the contract shall prevent full disclosure and proof of the nature of the medical impairment, the misrepresentation shall be presumed to have been material.

**31-20-1. Group Disability Insurance—Definition.**

“Group disability insurance” is hereby declared to be that form of disability insurance covering groups of persons as defined in this section, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the fam-

ilies or one or more dependents of such groups of persons, and issued upon the following basis:

(1) Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employes of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used herein may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed official. The policy may provide that the term "employees" shall include the trustees of their employees, or both, if their duties are principally connected with such trusteeship. The term "employer" as used in this subsection shall be construed to include the State of Utah or its various agencies, including institutions of higher education, counties, cities, incorporated towns, school districts and other political subdivisions of this state, and any such body may in order to promote the better efficiency of its employees, insure its employees, or any class or classes thereof, and may pay, or authorize to be paid, out of the corporate revenue of such body the premiums required from time to time to maintain such group disability insurance in force.

(2) Under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used herein may include retired employees.

(3) Under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subsection (2) of this section, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association, or employees of members of such association, for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(4) Under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this

state to insure any class or classes of individuals that could be insured under such group life policy.

(5) Under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract.

(6) Any group disability policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

### **31-20-2. Group Disability Insurance Provisions.**

Each such group disability insurance policy shall contain in substance the following provisions:

(1) A provision that, in the absence of fraud, all statements made by applicants or the policyholders or by an insured person shall be deemed representations and not warranties, and that no statement made for the purpose of effecting insurance shall void such insurance or reduce benefits unless continued in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary.

(2) A provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group, a statement in summary form of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one statement need be issued for each family unit.

(3) A provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

### **31-20-3. Making Direct Payments for Services.**

Any group disability policy may provide that all or any portion of any indemnities provided by any such policy on account of hospital, nursing, medical or surgical services may, at the insurer's option, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payments so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

### **31-20-4. Readjustment of Rates Based on Experience.**

Any contract of group disability insurance may provide for the readjustment of the rate of premium based upon the experience thereunder. If a policy dividend is hereafter declared or a reduction in rate is hereafter made or continued for the first or any subsequent year of insurance under any policy of group disability insurance heretofore or hereafter issued to any policyholder, the excess, if any, of the aggregate dividends or rate reductions under such policy and all other group insurance policies of the policyholder over the aggregate expenditure for insurance under such policies made from funds contributed by the policyholder, or by an employer of insured persons, or by a union or

association to which the insured persons belong, including expenditures made in connection with administration of such policies, shall be applied by the policyholder for the sole benefit of insured employees or members.

### **31-20-5. Blanket Disability—Requirements.**

Blanket disability insurance is hereby declared to be that form of disability insurance covering groups of persons as enumerated in one of the following subdivisions.

(1) Under a policy or contract issued to any common carrier or to any operator, owner or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on such common carrier or such means of transportation.

(2) Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees, dependents or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder.

(3) Under a policy or contract issued to a college, school or other institution of learning, a school district or districts, or school jurisdictional unit, or to the head, principal or governing board of any such educational unit, who or which shall be deemed the policyholder, covering students, teachers or employees.

(4) Under a policy or contract issued to any religious, charitable, recreational, educational, or civic organization, or branch thereof, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

(5) Under a policy or contract issued to a sports team, camp or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials or supervisors.

(6) Under a policy or contract issued to any volunteer fire department, first aid, civil defense, or other such volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by preference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

(7) Under a policy or contract issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.

(8) Under a policy or contract issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

(9) Under a policy or contract issued to cover any other risk or class of risks which, in the discretion of the commissioner, may be properly eligible for blanket disability insurance. The discretion of the com-

missioner may be exercised on an individual risk basis or class of risks, or both.

### **31-20-6. Disability Insurance—Provisions.**

Any insurer authorized to write disability insurance in this state shall have the power to issue blanket disability insurance. No such blanket policy, except as provided in section 31-20-9, may be issued or delivered in this state unless a copy of the form thereof shall have been filed in accordance with section 31-19-9. Every such blanket policy shall contain provisions which in the opinion of the commissioner are not less favorable to the policyholder and the individual insured than the following:

(1) A provision that the policy, including endorsements and a copy of the application, if any, of the policyholder and the persons insured shall constitute the entire contract between the parties, and that any statement made by the policyholder or by a person insured shall in absence of fraud, be deemed a representation and not a warranty, and that no such statements shall be used in defense to a claim under the policy, unless contained in a written application. Such person, his beneficiary, or assignee, shall have the right to make written request to the insurer for a copy of such application and the insurer shall, within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action based upon or involving any statements contained therein.

(2) A provision that written notice of sickness or of injury must be given to the insurer within twenty days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(3) A provision that the insurer will furnish either to the claimant or to the policyholder for delivery to the claimant such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of fifteen days after giving of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(4) A provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within ninety days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim

if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

(5) A provision that all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.

(6) A provision that the insurer at its own expense, shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy where it is not prohibited by law.

(7) A provision that no action at law or in equity shall be brought to recover under the policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

#### **31-20-7. Individual Application Not Required.**

An individual application need not be required from a person covered under a blanket accident and sickness policy or contract, nor shall it be necessary for the insured to furnish each person a certificate.

#### **31-20-8. Payment of Benefit Under Blanket Disability.**

All benefits under any blanket accident and sickness policy or contract shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, except that if the person insured be a minor or otherwise not competent to give a valid release, such benefits may be made payable to his parent, guardian or other person actually supporting him. Provided further, however, that the policy may provide that all or a portion of any indemnities provided by any such policy on account of hospital, nursing, medical or surgical service may, at the option of the insurer and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the obligation of the insurer with respect to the amount of insurance so paid.

#### **31-20-9. Commissioner May Exempt Certain Requirements.**

The commissioner may exempt from the policy filing and approval requirements of section 31-19-9 for so long as he deems proper, any blanket accident and sickness policy or contract to which in his opinion such requirements may not practicably be applied, or may dispense with such filing and approval as, in his opinion, is not desirable nor necessary for the protection of the public.

**31-22-1. Section Applicable to Life Insurance.**

(1) No policy of life insurance, other than group and pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions required by sections 31-22-2, 31-22-3, 31-22-4, 31-22-5, 31-22-6, 31-22-7, 31-22-8, 31-22-9, and 31-22-10. This section shall not apply to annuity contracts nor to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

**31-22-2. Grace Period Provision.**

There shall be a provision that a grace period of thirty days, or, at the option of the insurer, of one month of not less than thirty days, or of four weeks in the case of industrial life insurance policies the premiums for which are payable more frequently than monthly, shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall continue in full force; the insurer may impose an interest charge not in excess of six per cent per annum for the number of days of grace elapsing before the payment of the premium, and whether or not such interest charge is imposed, if a claim arises under the policy during such period of grace the amount of any premium due or overdue, together with interest and any deferred installment of the annual premium, may be deducted from the policy proceeds.

**31-22-3. Additional Benefits.**

There shall be a provision that the policy (exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means) shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of two years from its date of issue.

**31-22-4. What Constitutes Entire Contract.**

There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties, and that all statements contained in such an application shall in the absence of fraud, be deemed representations and not warranties.

**31-22-5. Provision—Correct Age or Ages.**

There shall be a provision that if the age of the insured or any other person whose age is considered in determining the premium or benefit has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.



**31-22-6. Provision of Participating Policies.**

(1) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy provided the policy is in force and all premiums to that date are paid. Except as provided in this section, any dividend becoming payable shall at the option of the party entitled to elect such option be either:

(a) Payable in cash, or

(b) Applied to any one of such other dividend options as may be provided by the policy. If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other dividend option may be elected, such period shall be not less than thirty days following the date on which such dividend is due and payable. The annually apportioned dividend shall be deemed to be payable in cash within the meaning of paragraph (a) of this section even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed six years from the date of apportionment and that interest will be added to such dividend at a specified rate. If a participating policy provides that the benefit under any paid-up nonforfeiture provisions is to be participating, it may provide that any divisible surplus becoming payable or apportioned while the insurance is in force under such nonforfeiture provisions shall be applied in the manner set forth in the policy.

(2) In participating industrial life insurance policies, in lieu of the provision required in subsection (1) of this section, there shall be a provision that, beginning not later than the end of the fifth policy year, the policy shall participate annually in the divisible surplus, if any, in the manner set forth in the policy.

**31-22-7. Non-Forfeiture Values of Policy.**

(1) There shall be a provision that after three full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding six per cent per annum, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness

on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for six months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan.

(2) This section shall not apply to term policies nor to term insurance benefits provided by rider or supplemental policy provisions, or to industrial life insurance policies.

#### **31-22-8. Table of Installment Payments.**

In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments.

#### **31-22-9. Reinstatement Provision.**

There shall be a provision that unless :

- (1) the policy has been surrendered for its cash surrender value, or
- (2) its cash surrender value has been exhausted, or

(3) the paid-up term insurance, if any, has expired, the policy will be reinstated at any time within three years (or two years in the case of industrial life insurance policies) from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears and the payment or reinstatement of any other indebtedness to the insurer upon the policy, all with interest at a rate not exceeding six per cent per annum compounded annually.

#### **31-22-10. Industrial Life Insurance Policy—Provisions.**

An industrial life insurance policy shall have the name of the beneficiary designated thereon with a reservation of the right to designate or change the beneficiary after the issuance of the policy. The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured. The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than thirty days after the death of the insured, or if the beneficiary is the estate of the insured, or is a minor, or dies before the insured, or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the executor or administrator of the insured, or to any relative of the insured by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. The policy may also include a similar provision applicable to any other payment due under the policy.

**31-22-11. Incontestability Clause.**

A clause in any policy of life insurance providing that such policy shall be **incontestable after a specified period** shall preclude only a contest of the **validity of the policy**, and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exceptions are excepted in such clause.

**31-22-12. Unlawful Provisions of Contracts.**

It shall be unlawful for any life insurance company to issue or deliver in this state any life insurance policy containing any:

(1) Provision for forfeiture of the policy for failure to repay any loan on the policy or to pay interest on such loan while the total indebtedness on the policy is less than the loan value thereof. In ascertaining the indebtedness due upon policy loans the interest, if not paid when due, shall be added to the principal of such loans and shall bear interest at the rate specified in the note or loan agreement.

(2) Provision limiting the time within which any action at law or in equity may be commenced to less than five years after the cause of action shall accrue.

(3) Provision by which the policy shall purport to be issued or to take effect more than one year before the original application for the insurance is made, if thereby the insured would rate at an age more than one year younger, according to his age at nearest birthday, than his age at the date of his application, unless the aggregate amount of the annual premiums for the whole term of such period shall be paid in cash.

The foregoing provisions of this section shall not apply to annuities, industrial policies, or to companies operating on the assessment plan.

**31-22-13. "Standard Non-Forfeiture Law."**

(1) This section shall be known and may be cited as the "Standard Non-forfeiture Law."

(2) In the case of policies issued on or after July 1, 1961, no policy of life insurance, except as stated in subsection (8) of this section, shall be issued or delivered in this state unless it shall contain 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:

(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 sixty 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 value as is specified in this section.

(b) That, upon surrender of the policy within sixty 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 sixty days after the due date of the premium in default.

(d) That, if the policy shall have become paid up by 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 thirty days after any policy anniversary, a cash surrender value of such amount as is specified in this section.

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty 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.

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.

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 the surrender of the policy.

(3) 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) of this section, 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) the then present value

of the adjusted premiums as defined in subsections (5) and (6) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the policy. Any cash surrender value available within thirty 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) of this section, 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) Except as provided in the paragraph (c) of this subsection, 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) the then present value of the future guaranteed benefits provided for by the policy; (ii) two per cent 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) forty per cent of the adjusted premium for the first policy year; (iv) twenty-five per cent 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. Provided, however, that in applying the percentages specified in (iii) and (iv) of this paragraph, no adjusted premium shall be deemed to exceed four per cent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this section 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 shall be deemed 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 ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy

prior to the attainment of age ten were the amount provided by such policy at age ten.

(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) of this paragraph being calculated separately and as specified in paragraphs (a) and (b) of this subsection except that, for the purposes of (ii), (iii) and (iv) of paragraph (a) of this subsection, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) of this paragraph 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) of this paragraph.

(d) Except as otherwise provided in subsection (6) of this section, 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 or 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 three and one-half per cent 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 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) In the case of ordinary policies issued on or after the operative date of this paragraph (a) as defined herein, 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, not exceeding three and one-half per cent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, 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. 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.

Any company may file with the commissioner a written notice of its election to comply with the provisions of this paragraph (a) after a specified date before January 1, 1966. After the filing of such notice, when upon such specified date (which shall be the operative date of this paragraph (a) for such company), this paragraph (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 this paragraph (a) for such company shall be January 1, 1966.

(b) In the case of industrial policies issued on or after the operative date of this paragraph (b) 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, not exceeding three and one-half per cent 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 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.

Any company may file with the commissioner a written notice of its election to comply with the provisions of this paragraph (b) after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph (b) for such company), this paragraph (b) 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 paragraph (b) for such company shall be January 1, 1968.

(7) 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. All values referred to in such 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. The net value of any paid-up additions, other than paid-up term additions, shall not be less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (3) of this section, additional benefits payable (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of total and permanent disability, (c) as reversionary annuity or deferred reversionary annuity benefits, (d) 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) 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 twenty-six, is 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) as other policy benefits additional to life insurance and 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.

(8) This section shall not apply to any reinsurance, group insurance, pure endowment annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (5) and (6) of this section, is less than the adjusted premium so calculated, on such fifteen year term policy issued at the same age and for the same initial amount of insurance, nor to any policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

#### **31-22-14. Standard Valuation Law.**

(1) This section shall be known and may be cited as the "Standard Valuation Law."

(2) The commissioner shall annually value, or cause to be valued, the reserve liabilities (in this section called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, except that in the case of an alien company, such valuation shall be limited to its United States business, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required in this section of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance superisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as they had been computed in the manner prescribed by the law of that state or jurisdiction.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this section.



(3) This subsection shall apply only to those policies and contracts issued prior to July 1, 1961, or prior to the later operative date of the Standard Nonforfeiture Law as approved by the commissioner for the issuing insurer under Laws of Utah, 1961, chapter 64, subparagraph I (repealed by this act), not later than January 1, 1963. For the purpose of making valuations of life insurance policies and of determining the reserves required to be maintained therefor under the provisions of this title the rate of interest assumed shall be three and one-half per cent per annum, and the rate of mortality shall be established by the table known as the "American Experience Table of Mortality" for policies issued after January 1, 1910; for policies issued prior to January 1, 1910, the rate of interest assumed shall be four per cent per annum, and the rate of mortality shall be established by the table known as the "Actuaries' Table of Mortality"; such values to be on the basis of net premiums. Policies issued on or after May 13, 1947, may be valued on the basis of not more than three and one-half per cent interest per annum and the Commissioner's 1941 Standard Ordinary Mortality Table for ordinary insurance and the 1941 Standard Industrial Mortality Table for industrial insurance and such other mortality tables as may be approved by the commissioner for insurance issued on a substandard basis and for group life insurance, according to the commissioner's reserve valuation method, as defined in subsection (5) of this section. Reserves required to be maintained under the provisions of this title may be computed according to any mortality table, rate of interest and method of valuation producing greater aggregate reserves than those produced by the foregoing rules.

(4) This subsection shall apply only to those policies and contracts issued on or after July 1, 1961, or the later operative date of the Standard Nonforfeiture Law as approved by the commissioner for the issuing insurer under Laws of Utah, 1961, chapter 64, subparagraph I (repealed by this act), not later than January 1, 1963. The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subsection (5) of this section, three and one-half per cent interest, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, — Commissioner's 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subparagraph F, chapter 64, Laws of Utah, 1961, (repealed by this act and re-enacted by this act as section 32-22-13 (6) (a), such operative date being the date elected by the insurer by written notice to the commissioner between July 1, 1961, and January 1, 1966, and if not so elected, then January 1, 1966, and the Commissioner's 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(b) For all industrial life insurance policies issued on the standard

basis, excluding any disability and accidental death benefits in such policies, — the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subsection (6) (b) of section 31-22-13 of this act, and the Commissioner's 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts — for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after the effective date of this act and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies — for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after May 9, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves of life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits — such tables as may be approved by the commissioner.

(5) Reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year,

divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

Reserves according to the commissioner's reserve valuation method for (i) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) annuity and pure endowment contracts, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of the preceding paragraph, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(6) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in subsection (5) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(7) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard provided in this section, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further provision that if such lower rate differs from the rate used in the calculating of the nonforfeiture benefits by more than one-half per cent, the company issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender value and nonforfeiture benefits in such policies as the commissioner shall approve.

(8) If the gross premium charged by any life insurance company on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

**31-22-15. Second Year—Suicide Clause Provisions.**

From and after the effective date of this act, the suicide of a policyholder after the second policy year of any policy written by any life insurance company doing business in this state shall not be a defense against the payment of a life insurance policy, whether such suicide was voluntary or involuntary and whether such policyholder was sane or insane; provided, that this section shall not apply to policies insuring against death by accident only, nor to the accident or double indemnity provisions of an insurance policy.

**31-22-16. May Purchase Policies.**

Any life insurance company of this state may purchase for its own benefit any policy of insurance or other obligation of the company and any claim of its policyholders, and may lend to the holders of policies of the company a sum not exceeding the reserve value of the policies and the surplus or dividend additions thereto, if any, at the time the loan is made, for the payment of which loan the policies and all profits thereon shall be pledged.

**31-22-17. Industrial Life Insurance Requirements.**

For the purposes of this code "industrial life insurance" is that form of life insurance written under policies of face amount of \$1,000 or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter, and under which premiums are payable monthly or more often.

**31-22-18. Reinstated Policy Contestable Provision.**

(1) A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

(2) When any life insurance policy or annuity contract is reinstated, such reinstated policy or contract may exclude or restrict liability to the same extent that such liability could have been or was excluded or restricted when the policy or contract was originally issued, and such exclusion or restriction shall be effective from the date of reinstatement.

**31-23-1. National Guard Group Insurance—Provisions.**

No policy of group life insurance other than credit insurance issued under chapter 34 of this code or group insurance issued on the lives of members of the Utah National Guard under section 39-1-62, shall be delivered in this state unless it conforms to one of the descriptions in sections 31-23-2, 31-23-3, 31-23-4 and 31-23-5, and unless in compliance with the other applicable provisions of this chapter.

**31-23-2. Trustees—Group Insurance Provisions.**

The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustee of a fund established by an employer, which employer or trustee is deemed the policyholder, insuring

employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships of the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation, by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The term "employer" as used in this section shall be construed to include the State of Utah or its various agencies, including institutions of higher education, counties, cities, incorporated towns, school districts and other political subdivisions of this state, and any such body may in order to promote the better efficiency of its employees, insure its employees, or any class or classes thereof, and may pay, or authorize to be paid, out of the corporate revenue of such body the premiums required from time to time to maintain such group insurance in force.

(3) The premiums for the policy shall be paid by the policyholders, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five per cent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at least ten employees at date of issue.

(5) The amounts of insurance under the policy must be based upon

some plan precluding individual selection either by the employees or by the employer or trustee.

### **31-23-3. Group Insurance—Labor Union—Requirements.**

The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policy holder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. A policy on which the premium is to be derived in part from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five per cent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least twenty-five members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

### **31-23-4. Group Insurance—Trustees of Fund.**

A policy issued to the trustees of a fund established by two or more employers in the same industry or in related industries, or by one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the union for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) No policy may be issued to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer, except where such other employer exercises substantial control over the business operations of the participating employers.

(2) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor

or partners if any employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietorship or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

(3) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five per cent of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at date of issue at least 100 persons; and it must cover an average of not less than three persons per employer unit unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or union.

#### **31-23-5. Group Insurance—Issued to Principal—Requirements.**

The lives of a group of individuals may be insured under a policy issued to a principal, or if such principal is a life insurer, by or to such principal, covering when issued not less than ten agents of such principal, subject to the following requirements:

(1) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for such principal for a commission or other fixed or ascertainable compensation.

(2) The policy must insure either all of the agents or all or any class or classes thereof, determined by conditions pertaining to the services to be rendered by such agents, except that if a policy is intended

to insure several such classes it may be issued to insure any such class of which seventy-five per cent are covered and extended to other classes as seventy-five per cent thereof express the desire to be covered.

(3) The premium on the policy shall be paid by the principal or by the principal and the agents jointly. When the premium is paid by the principal and the agent jointly and the benefits of the policy are offered to all eligible agents, the policy, when issued, must insure not less than seventy-five per cent of such agents.

(4) The amounts of insurance shall be based upon some plan which will preclude individual selection.

(5) The insurance shall be for the benefit of persons other than the principal.

### **31-23-6. Group Insurance—Spouses and Dependents.**

Any group life policy issued under sections 31-23-2, 31-23-3, 31-23-4, or 31-23-5, may be extended to insure the employees or members against loss due to the death of their spouses and dependent children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's or principal's funds or funds contributed by the employer or union, or from funds contributed by the insured employees or members or agents, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members or agents, the insurance with respect to spouses and children may be placed in force only if at least seventy-five per cent of the then eligible employees or members or agents, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elected to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members or agents, all eligible employees or members or agents, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or agents or by the policyholder, employer or union or principal, and shall not exceed one thousand dollars with respect to any spouse or child.

(3) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of agency, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse shall be entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, subject to the requirements of subdivisions (1), (2) and (3) of section 31-23-15. If any group policy terminates or is amended so as to terminate the insurance of any class of employees or members or agents and the employee or member or agent is entitled to have issued



an individual policy, under section 31-23-16, the spouse shall also be entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided in this section. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this section, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding section 31-23-14, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

#### **31-23-7. Group Life Insurance—General Provisions.**

No policy of group life insurance used under this chapter shall be delivered in this state unless it contains in substance the provisions set forth in sections 31-23-8, 31-23-9, 31-23-10, 31-23-11, 31-23-12, 31-23-13, 31-23-14, 31-23-15, 31-23-16, and 31-23-17 or provisions which in the opinion of the commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided, however (1) that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and (2) that if the group life insurance policy is on a plan of insurance other than term plan, it shall contain a non-forfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but no provisions of this section shall be construed to require that group life insurance policies contain the same non-forfeiture provisions as are required for individual life insurance policies.

#### **31-23-8. Group Life Insurance—Grace Period.**

The group life insurance policy shall contain a provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of the pro rata premium for the time the policy was in force during such grace period.

#### **31-23-9. Group Life Insurance—Incontestability Period.**

The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue, and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years

during such person's lifetime nor unless it is contained in a written instrument signed by him.

**31-23-10. Group Life Insurance—Application.**

The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

**31-23-11. Group Life Insurance Policy—Requirements.**

The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

**31-23-12. Adjustment for Misstatement of Facts.**

The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provisions to contain a clear statement of the method of adjustment to be used.

**31-23-13. Partial Payment for Burial of Insured.**

The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding \$500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

**31-23-14. Issuance of Individual Certificate.**

The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in sections 31-23-15, 31-23-16 and 31-23-17.

**31-23-15. Individual May Convert to Individual Policy.**

The group life insurance policy shall contain a provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall

be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

(1) the individual policy shall, at the option of such person be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for ;

(2) the individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which such person is or becomes eligible under the same or any other group policy within thirty-one days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this section, be included in the amount which is considered to cease because of such termination ; and

(3) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy to the class of risk to which such person then belongs, and to the age attained on the effective date of the individual policy.

#### **31-23-16. Termination of Policy After Five Years.**

The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by section 31-23-15, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination and (2) \$2,000.

#### **31-23-17. Death Payments Before Policy is Issued or Paid.**

The group life insurance policy shall contain a provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with sections 31-23-15 and 31-23-16 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

**31-25-8. Reserve Requirements for Title Insurer.**

In addition to an adequate reserve for outstanding losses, a title insurer shall maintain an unearned premium reserve fund of not less than an amount computed as follows:

(1) Fifteen cents for each \$1,000 face amount of retained liability under each title insurance contract issued.

(2) During each of the twenty years next following the year in which the title insurance contract was issued, the reserve applicable to the contract may be reduced by five per cent of the original amount of such reserve.

Such fund shall be maintained for the protection of policyholders and shall not be subject to the claims of stockholders or creditors other than policyholders.

**31-27-9. Circulating Misrepresentation.**

(1) No insurance company doing business in this state, or officer, director, employee or agent thereof, and no other person shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular, or statement of any kind, misrepresenting the terms of any policy or the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

(2) No person shall make any misleading representations or incomplete or fraudulent comparison of any insurance policy or annuity contract, or of any insurer, for the purpose of inducing or tending to induce, any person to lapse, forfeit, substitute, surrender, terminate, retain, or convert any insurance policy or annuity contract, or to replace such policy of insurance or annuity contract with another policy or contract.

(3) A violation of this section by an agent or an officer or employee of an insurance company is a misdemeanor, and any insurer violating or participating in the violation of this section may have its certificate of authority in this state suspended for a period not exceeding six months for each offense.

**31-27-14. Offering Inducements to Buy Policy—Rebate—Discount—Abatement or Reduction—Exceptions.**

(1) (a) No insurer or any employee thereof, and no agent, broker, or solicitor shall pay, allow or give, or offer to pay, allow to give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy, except to the extent provided for in an applicable filing which is in effect as provided in chapter 18 of this code.

(b) No insured named in a policy and no owner of a policy, nor any employee of such insured, or owner shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or re-

duction of premium, or any special favor or advantage or valuable consideration or inducement.

(2) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(3) Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to agents, brokers or solicitors duly licensed in this state, or as prohibiting the return or crediting of dividends, savings or unabsorbed portions of premium deposits by participating insurers to their subscribers or policyholders.

#### **31-29-35.5. Agent or Representative Subject to Provisions of Law.**

Each agent or representative of a fraternal benefit society shall be subject to the provisions of chapter 17 of this title if such agent or representative offers insurance to persons who are not members, or dependents of members, and who are not applying for membership, or otherwise eligible for insurance under this chapter.

#### **31-31-10. Non-Forfeiture Values.**

In the case of policies issued on or after July 1, 1963, policies of life insurance issued by mutual benefit associations shall contain provisions for non-forfeiture values as set forth in section 31-22-13.

#### **31-35-1. "Unauthorized Insurers Process Act."**

This chapter shall be known and may be cited as the "Unauthorized Insurers Process Act." The purpose of this act is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts.

The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the legislature herein provides a method of substituted service of process upon such insurers and declares in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, chapter 20, 1st session, s. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

#### **31-35-2. Unauthorized Acts of Foreign or Alien Insurer.**

Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer, is equivalent to and shall constitute an appointment by such insurer of the commissioner to be its true and lawful attorney, upon whom may be served all lawful proc-

ess in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer:

- (1) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein.
- (2) the solicitation of applications for such contracts.
- (3) the collection of premiums, membership fees, assessments or other consideration for such contracts, or
- (4) any other transaction of insurance business.

### 31-35-3. Service of Process.

(1) Service of process shall be made as provided for in section 31-5-7 (1), and:

(a) The commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all processes so served upon him.

(b) Such service of process is sufficient, provided (i) notice thereof and (ii) a copy of the process, are sent to the defendant at its last known principal place of business, by the plaintiff or the plaintiff's attorney, by registered mail within ten days thereafter, and provided that on or before the date the defendant is required to appear, or within such further time as the court may allow, there shall be filed with the clerk of the court in which such action is pending (iii) the defendant's receipt of registration, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and (iv) the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith.

(2) Service of process in any such action, suit or proceeding shall, in addition to the manner provided in subsection (1) of this section, be valid if served upon any person within this state who, on behalf of such insurer, is:

- (a) soliciting insurance, or
- (b) making, issuing or delivering any contract of insurance, or
- (c) collecting or receiving any premium, membership fee, assessment or other consideration for insurance; and a copy of such process is sent to the defendant in the same manner as set forth in subsection (1) (b) of this section.

(3) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty days from the the date of the filing of the affidavit of compliance.

(4) Nothing contained in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

**31-35-4. Requirements of Unauthorized Insurer—Bond Certificate of Authority—Filing Suit or Motion.**

(1) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall:

(a) deposit with the clerk of the court in which such action, suit or proceeding is pending, cash or securities, or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount determined by the court to be sufficient to secure the payment of any final judgment which may be rendered in such action, provided, however, that the court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding, and that such insurer will pay any final judgment rendered without requiring suit to be brought on such judgment in the state where such securities are located, or

(b) procure a certificate of authority to transact the business of insurance in this state.

(2) In any action, suit or proceeding in which service is made in the manner provided in section 31-35-3, the court may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) of this section and to defend such action.

(3) Nothing in subsection (1) of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion, in accordance with the applicable rules of civil procedure, to quash a writ or to set aside service thereof made in the manner provided in section 31-35-3 on the ground either:

(a) that such unauthorized insurer has not done any of the acts enumerated in section 31-35-2, or

(b) that the person on whom service was made pursuant to subsection (2) of section 31-35-3 was not doing any of the acts therein enumerated.

**31-35.5. Fees Allowed in Case of Judgment.**

In any action against an unauthorized foreign or alien insurer, upon a contract of insurance issued or delivered in this state to a resident thereof, or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half per cent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be

less than twenty-five dollars. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

#### **31-35-6. Exceptions to Act.**

The provisions of this act shall not apply to any action, suit or proceeding against any unauthorized foreign or alien insurer arising out of any contract of:

- (1) reinsurance, ocean marine, aircraft or railway insurance;
- (2) insurance effectuated in accordance with chapter 15, title 31 of this code;
- (3) insurance against legal liability arising out of the ownership, operation or maintenance of any property having a permanent situs outside this state; or
- (4) insurance against loss of or damage to any property having a permanent situs outside this state;

where such contract of insurance contains a provision designating the commissioner or a bona fide resident of Utah to be the true and lawful attorney of such unauthorized insurer upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of such contract or where the insurer enters a general appearance in any such suit, action or proceeding.

#### **31-36-1. Purpose of Act to Make Unauthorized Insurers Subject to Insurance Commission—Courts.**

(1) The purpose of this act is to subject to the jurisdiction of the commissioner and to the jurisdiction of the courts of this state insurers not authorized to transact business in this state which place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The legislature declares it is in the interest of the citizens of this state who purchase insurance from insurers which solicit insurance business in this state in the manner set forth in the preceding sentence that such insurers be subject to the provisions of this act. In furtherance of such state interest, the legislature intends to provide a method of substituted service of process upon such insurers and declares that in so doing, it exercises its powers to protect its residents and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, chapter 20, 1st session, s. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided shall be in addition to any existing powers of this state.

(2) The provisions of this act shall be liberally construed.

#### **31-36-2. Definitions.**

When used in this act:

(1) The word "commissioner" shall mean the commissioner of insurance of this state.



(2) The words "Unfair Trade Practice Act" shall mean the act relating to unfair methods of competition and unfair and deceptive acts and practices in the business of insurance, chapter 27 of this code.

(3) The word "residents" shall mean and include person, partnership or corporation, domestic, alien or foreign.

**31-36-3. Not Authorized to Publish or Circulate Advantages of Contract.**

No unauthorized foreign or alien insurer of the kind described in section 31-36-1 shall make, issue, circulate or cause to be made, issued, or circulated, to residents of this state any estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practice Act, and whenever the commissioner shall have reason to believe that any such insurer is engaging in such unlawful advertising, it shall be his duty to give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

**31-36-4. Giving Notice by Commissioner of Prohibited Acts.**

If after forty days following the giving of the notice mentioned in section 31-36-3 such insurer has failed to cease making, issuing, or circulating such false misrepresentations or causing the same to be made, issued or circulated in this state, and if the commissioner has reason to believe that a proceeding by him in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing any of the acts enumerated in section 31-36-5, he shall take action against such insurer under the Unfair Trade Practice Act.

**31-36-5. Commissioner to Act as Lawful Attorney for Charges Against the Unauthorized Insurer—Procedure.**

(1) Any of the following acts in this state, effected by mail or otherwise, by any such unauthorized foreign or alien insurer: (a) the issuance or delivery of contracts of insurance to residents of this state, (b) the solicitation of applications for such contracts, (c) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (d) any other transaction of insurance business, is equivalent to and shall constitute an appointment by such insurer of the commissioner of insurance and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in section 31-36-3, or in any

section, suit or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices or process is of the same legal force and validity as personal service of such statement of charges, notices or process in this state, upon such insurer.

(2) Service of a statement of charges and notices under such Unfair Trade Practice Act shall be made by any deputy or employee of the department of insurance delivering to and leaving with the commissioner or some person in apparent charge of his office, two copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under said act provided, shall be made by delivering and leaving with the commissioner, or some person in apparent charge of his office, two copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one of the copies of such statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices and process so served. Such service of statement of charges, notices or process shall be sufficient provided they shall have been so mailed and the defendant's receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing a compliance herewith are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

(3) Service of statement of charges, notices and process in any such proceeding, action or suit shall in addition to the manner provided in subsection (3) (b) of this section be valid if served upon any person within this state who on behalf of such insurer is

(a) soliciting insurance, or  
(b) making, issuing or delivering any contract of insurance, or  
(c) collecting or receiving in this state any premium for insurance; and a copy of such statement of charges, notices or process is sent within ten days thereafter by registered mail by or on behalf of the commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance herewith, are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

(4) No cease or desist order or judgment by default under this section shall be entered until the expiration of thirty days from the date of the filing of the affidavit of compliance.

(5) Service of process and notice under the provisions of this act shall be in addition to all other methods of service provided by law, and nothing in this act shall limit or prohibit the right to serve any statement of charges, notices or process upon any insurer in any other manner now or hereafter permitted by law.

**31-36-6. Unauthorized Insurer False Advertising Process Act.**

This chapter shall be known as and may be cited as the "Unauthorized Insurers False Advertising Process Act."

**Section 3. Sections Repealed.**

Sections 31-5-18, 31-7-15, 31-7-16, 31-7-17, 31-14-1, 31-14-9, 31-17-12, 31-18-6, 31-19-8, 31-20-1, Utah Code Annotated 1953, 31-20-2, Utah Code Annotated 1953, as amended by Chapter 48, Laws of Utah 1953, 31-20-3, Utah Code Annotated 1953, 31-20-4, Utah Code Annotated 1953 as amended by Chapter 48, Laws of Utah 1953, 31-20-5, 31-20-6, 31-20-7, 31-20-8, Utah Code Annotated 1953, 31-22-1, Utah Code Annotated 1953, as amended by Chapter 48, Laws of Utah 1955, and Chapter 63, Laws of Utah 1961, 31-22-1.5, Utah Code Annotated 1953, as enacted by Chapter 64, Laws of Utah 1961, 31-22-2, Utah Code Annotated 1953, 31-22-3, Utah Code Annotated 1953, as amended by Chapter 65, Laws of Utah 1961, 31-22-4, 31-22-5, 31-22-6, 31-22-7, 31-22-8, 31-22-9, 31-22-10, 31-22-11, Utah Code Annotated 1953, 31-23-1, Utah Code Annotated 1953, as amended by Chapter 58, Laws of Utah 1957, and Chapter 66, Laws of Utah 1961, 31-23-2, 31-23-3, 31-23-4, 31-25-8, 31-25-9, 31-27-9, 31-27-14, 31-27-17, 31-27-18, 31-31-6, 31-31-10, Utah Code Annotated 1953, 31-33-24, 31-33-33, Utah Code Annotated 1953, as enacted by Chapter 56, Laws of Utah 1957, are hereby repealed.

**Section 4. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

**Section 5. Effective date.**

This act shall take effect on July 1, 1963.

Approved March 21, 1963.

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**CHAPTER 46**

H. B. No. 276

(Passed March 8, 1963. In effect March 14, 1963)

**INSURANCE TAX—FOR SECOND INJURY FUND**

**An Act Amending Section 31-14-4, Utah Code Annotated 1953, Relating to Taxation of Insurance Companies Writing Workmen's Compensation and Occupational Disease Disability Insurance; Providing for Payment of Tax in Special Fund and Credit for Taxes Paid—Enacting Clause.**

**Section 1. Section Amended.**

Section 31-14-4, Utah Code Annotated 1953, is amended to read:

**31-14-4. Taxation of Insurance Companies—Tax—Premium—Deduction.**

Every insurance company engaged in the transaction of business in this state shall pay to the state tax commission, on or before the thirty-first day of March in each year:

(1) a tax of two and one-fourth ( $2\frac{1}{4}$ ) per cent of the total premiums received by it during the next preceding calendar year from insurance covering property or risks located in this state, other than ocean marine as specified in subsection (2) hereof, less the amount of all premiums returned or credited to policyholders on direct business in this state and premiums received for re-insurance of such property or risks and, less the amount of dividends, including premium reduction coupons maturing within said year, paid or credited to policyholders within this state or applied in abatement or reduction of premiums due during the calendar year next preceding, and less premiums on policies which have been or will be issued by domestic benefit, or cooperative benefit associations;

(2) a tax of five per cent of its taxable underwriting profit, ascertained as hereinafter provided, from all insurance written within this state during the next preceding calendar year, upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from, importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for, and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks.

The underwriting profit on such ocean marine insurance written within this state shall be that proportion of the total underwriting profit of such insurer from such ocean marine insurance written within the United States which the amount of net premiums of such ocean marine insurance written within this state bears to the amount of net premiums of such insurer from such ocean marine insurance written within the United States.

The underwriting profit of such insurer on such ocean marine insurance written within the United States shall be determined by deducting from the net earned premiums on such ocean marine insurance written within the United States during the taxable year, meaning thereby the calendar year next preceding the date on which such tax is due, the following items:

(a) net losses incurred, meaning gross losses incurred during such calendar year under such ocean marine insurance contract written within the United States, less re-insurance claims collected or collectible and less net salvages or recoveries collected or collectible from any source applicable to the corresponding losses under such contracts;

(b) net expenses incurred in connection with such ocean marine contracts, including all state and federal taxes in connection therewith;

but in no event shall the aggregate amount of such net expenses deducted exceed forty per cent of the net premiums on such ocean marine insurance contracts, ascertained as hereinafter provided; and

(c) net dividends paid or credited to policyholders on such ocean marine insurance contracts.

In determining the amount of such tax, net earned premiums on such ocean marine insurance contracts written within the United States during the taxable year shall be arrived at as follows:

From gross premiums written on such contracts during the taxable year deduct any and all return premiums, premiums on policies not taken, premiums paid for re-insurance of such contracts and net unearned premiums on all such outstanding contracts at the end of the taxable year; and add to such amount net unearned premiums on such outstanding marine insurance contracts at the end of the calendar year next preceding the taxable year.

In determining the amount of such tax, net expenses incurred shall be determined as the sum of the following:

(a) specific expenses incurred on such ocean marine insurance business consisting of all commissions, agency expenses, taxes, licenses, fees, loss adjustment expenses, and all other expenses incurred directly and specifically in connection with such business less recoveries or reimbursements on account of or in connection with such commissions or other expenses collected or collectible because of re-insurance or from any other source;

(b) general expenses incurred on such ocean marine insurance business, consisting of that proportion of general or overhead expenses incurred in connection with such business which the net premiums on such ocean marine insurance written during the taxable year bear to the total net premiums written by such insurer from all classes of insurance written by it during the taxable year, within the meaning of this paragraph, general or overhead expenses shall include salaries of officers and employees, printing and stationery, all taxes of this state and of the United States, except as included in paragraph (a) above, and all other expenses of such insurer, not included in paragraph (a) above, after deducting expenses specifically chargeable to any or all other classes of insurance business.

In determining the amount of such tax, the taxable underwriting profit of such insurer on such ocean marine insurance business written within this state, shall be ascertained as follows:

(a) In the case of every such insurer which has written any such business within this state during three calendar years immediately preceding the year in which such taxes were payable, the taxable underwriting profit shall be determined by adding or subtracting, as the case may be, the underwriting profit or loss on all such insurance written within the United States, ascertained as hereinbefore provided, for each of such three years and dividing by three.

(b) In the case of every such insurer other than as specified in paragraph (a) last above, such taxable underwriting profit, if any, shall be the underwriting profit, if any, on such ocean marine insurance business written within this state during the taxable year, ascertained as herein-

before provided; but after such insurer has written such ocean marine insurance business within this state during three calendar years, an adjustment shall be made on the three year average basis by ascertaining the amount of tax payable in accordance with paragraph (a) above.

(3) Every insurance company engaged in the transaction of business in this state writing workmen's compensation or occupational disease disability insurance who is required under subparagraph (1) of this section to pay a tax on insurance premiums shall pay to the state tax commission, on or before the thirty-first day of March in each year, a tax of one per cent of the total premiums received by it during the next preceding calendar year from the writing of workmen's compensation or occupational disease disability insurance, subject to all provisions, limitations and exceptions contained in this section, which tax shall be in addition to the tax set forth in subparagraph (1) of this section; and said additional tax collected by the state tax commission shall be paid into the state treasury to the credit of the special fund provided for in subsection (1) of Section 35-1-68, provided, however, that said additional tax of one per cent against insurance companies as collected and paid into the state treasury to the credit of the special fund provided for in subdivision (1) of Section 35-1-68, shall be deducted from any tax assessed against, claimed or due from the insurance company writing workmen's compensation or occupational disease disability insurance under Section 31-14-4.

(4) If any insurance company shall have paid a property tax in the state of Utah or any fee for examination required by this code during said year, it shall be entitled to deduct from the tax herein provided for the amount of such property tax paid for general state purposes, and the amount of any such examination fee.

(5) The taxes and fees as provided herein shall be in lieu of all other state, county, and municipal licenses and fees of every kind and character. All monies collected by the state tax commission under this section shall be covered into the state treasury to the credit of the state general fund, except as provided in section 31-14-2.

#### **Section 2. Effective Date.**

This act shall take effect upon approval.

Approved March 14, 1963.

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### **CHAPTER 47**

H. B. No. 45

(Passed March 14, 1963. In effect May 14, 1963)

#### **MOTOR CLUB ACT**

**An Act Relating to Motor Clubs; Providing for Their Licensing and Regulation by the State Commissioner of Insurance; Requiring Motor Clubs to Obtain Certificates of Authority and Approval of Their Service Agreements or Contracts; and Providing for Licensing and Regulation of Motor Club Agents.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Definitions as Used in This Act.**

(1) Motor club service shall consist of rendering, furnishing or procuring insurance service, towing service, emergency road service, license service, theft service, claims adjustment service, bail bond service, discount service, map service, touring service, legal service on a reimbursement basis, or any one or more of such services to persons in connection with ownership, operation, use or maintenance of a motor vehicle by a person in consideration of such person being or becoming a member of an association or club rendering, procuring or furnishing such service, or being or becoming entitled to receive membership or other motor club service therefrom.

(2) "Agent" means a person who solicits the purchase of, or transmits a service contract or an application for membership, aids in any manner in negotiation of the contract or membership or its renewal of continuance.

(3) "Bail bond service" means the furnishing or procuring of a cash deposit or undertaking required by law in order that a person accused of violation of any motor vehicle law may enjoy personal freedom pending trial.

(4) "Discount service" means the obtaining through the auspices or assistance of the motor club of items incidental to motoring, touring, travel or things reasonably connected therewith, or any act resulting in giving special discounts, rebates or reductions to holders of memberships in motor clubs.

(5) "Towing service" means the drafting or moving of a motor vehicle from one place to another under power other than its own.

(6) "Theft service" means an act by a motor club for the purpose of locating, identifying or recovering a stolen vehicle owned or controlled by the holder of a service contract with any such club or for the purpose of detecting or apprehending the person guilty of the theft.

(7) "Insurance service" means any act consisting of selling with a service contract or as a result of membership in or affiliation with an association or club, a policy of insurance.

(8) "Legal service on a reimbursement basis" means paying the fees of an attorney for his advice or services rendered to holders of service contracts.

(9) "Map service" means furnishing without cost, road maps, tour plans or tour guides to members of motor clubs.

(10) "License service" means the rendering of assistance by motor club in obtaining:

(a) Registration of a motor vehicle with the state.

(b) Operator's license.

(c) Chauffer's license.

(d) Transfer of legal or registered ownership upon the records of the department of motor vehicles of the State of Utah.

(11) "Person" means a person, firm, partnership, company, association or corporation engaged in selling, furnishing or procuring motor club service, either as principal or agent, for consideration.

(12) "Service contract" means an agreement or understanding

whereby persons for a consideration promise to render, furnish or procure for other persons motor club service as defined in this section.

(13) "Touring service" means furnishing touring information without cost to holders of service contracts.

(14) "Emergency road service" means the adjustment, repair, or replacement by a motor club of the equipment, tires or mechanical parts of a motor vehicle so as to permit it to be operated under its own power.

(15) "Motor club" means a person directly or indirectly engaged, either as principal or agent in offering for sale, furnishing or procuring motor club service.

(16) "Claim adjustment service" means an act by a motor club for the purpose of adjusting claims in behalf of the holder of a service contract with any such club, when such claim results from injury or damage to person or property arising out of an accident, in connection with the ownership, maintenance, operation and use of a motor vehicle, including the investigation of accidents in which members of motor clubs are involved.

(17) "Commissioner" means the commissioner of insurance for the State of Utah.

### **Section 2. Deposit Cash or Surety Bond—Effective Date.**

(1) A person shall not render or agree to render motor club service without first depositing and thereafter continuously maintaining security in one of the following forms with the commissioner:

(a) The sum of \$25,000.00 in cash or \$25,000.00 surety bond by a surety company admitted to do business in Utah, or \$25,000.00 in securities of a type approved by the commissioner and qualified for legal investment by an admitted insurer.

(b) If any security deposited with the commissioner shall become impaired and shall not be restored within thirty days after written demand by the commissioner, the commissioner shall revoke the certificate of authority of the motor club, or in the alternative the commissioner may require such additional security deposit as in his discretion he shall deem necessary to restore adequate securities for the motor club deposit.

(2) The provisions of subsection 1, of this section shall not apply until July 1, 1963, to any person rendering motor club service in this state on the effective date of this act.

### **Section 3. Security Provisions.**

Such security shall:

(1) Be for the protection, use and benefit of any person whose application for membership in a motor club has been accepted by such club or its representative.

(2) Be subject to the following conditions and, if a bond, shall be so expressly conditioned that:

(a) The club will faithfully furnish and render to such persons any and all of the motor club services sold or offered for sale by it.

(b) The club will pay any fines, fees or penalties imposed upon it pursuant to the provisions of this act.



**Section 4. Liability on Bond.**

If such bond is filed, any person defrauded or injured by any wrongful act, misrepresentation or failure on the part of the motor club with respect to the selling or rendering of any of its services, may bring suit on such bond in his own name; but the aggregate liability of the surety for all such suits shall, in no event, exceed the sum of such bond.

**Section 5. Deposit in Lieu of Bond.**

A deposit of cash or securities, in lieu of such bond, shall be subject to the conditions applying to the bond and is also subject to execution on judgments against the club.

**Section 6. Name to Be Approved by Commissioner.**

The name of the motor club shall be submitted to the commissioner for approval pursuant to section 8 before the commencement of business under the provisions of this act. The commissioner shall reject any name so submitted when the proposed name is deceptively similar to that of any other motor club or other corporation licensed or qualified to do business in this state.

**Section 7. Certificate of Authority.**

A person shall not render or agree to render motor club service in this state without first obtaining from the commissioner a certificate or authority so to act.

**Section 8. Condition for Obtaining Certificate of Authority.**

To apply for its original certificate of authority a motor club shall:

(1) File with the commissioner a formal verified application therefor in such form and detail as the commissioner may reasonably require, executed by its president or other principal officer, showing:

- (a) Its name, home office, location, organization date, state or country of its domicile;
- (b) The nature and type of service it proposes to transact;
- (c) Such additional information as the commissioner may reasonably require.

(2) File with the commissioner:

- (a) A copy of its charter as amended, certified, if a foreign company, by the proper public officer of the state or country of domicile;
- (b) A copy of its by-laws, if any, certified by its proper officer;
- (c) A statement of its financial condition, management and affairs.
- (d) A copy of each form of service agreement, contract, and service brochure it proposes to use in this state;
- (e) If a foreign company, a certificate from the proper public official from its state or country of domicile showing that it is duly organized and is authorized to transact the type of motor club service which it proposes to be transacted in Utah;

(f) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with the provisions of the laws of the State of Utah;

(g) Pay to the commissioner an initial application fee of \$100.00;

(h) File a certificate issued by the secretary of state that it has qualified to do business as a corporation in this state and that it has

appointed the commissioner as its attorney to receive service of legal process.

### **Section 9. Certificate of Authority—Fees—Reinstatement.**

(1) A certificate of authority is evidence of its authority to transact in this state the business of motor club service.

(2) Although issued to the motor club, the certificate of authority is at all times the property of the State of Utah. Upon any expiration, suspension, or termination thereof, the motor club shall promptly deliver the certificate of authority to the commissioner.

(3) A certificate of authority shall continue in force as long as the motor club is entitled thereto under this chapter and until suspended or revoked by the commissioner, or terminated at the request of the motor club; subject, however, to continuance of the certificate by the motor club each year by:

(a) Payment prior to March 1st of a continuation fee of \$25; and

(b) Due filing by the motor club of its annual statement for the calendar year preceding as required under section 30.

(4) If not so continued by the commissioner, its certificate of authority shall expire as of midnight on the 31st day of March next following such failure of the motor club to continue it in force. The commissioner shall promptly notify the motor club of the occurrence of any failure resulting in impending expiration of its certificate of authority.

(5) The commissioner may in his discretion upon the motor club's request, made within three months after expiration, reinstate a certificate of authority which the motor club has inadvertently permitted to expire, after the motor club has fully cured all of its failures which resulted in expiration, and upon payment by the motor club of a fee for reinstatement of \$50.00. Otherwise, the motor club shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

### **Section 10. Revoking Certificate of Authority—Grounds.**

(1) The commissioner may revoke, suspend or refuse to continue the certificate of authority of a motor club whenever, after a hearing and for cause shown, he determines that any of the following circumstances exist:

(a) The club has violated any provision of this chapter;

(b) It is found by the commissioner to be in such financial condition that its further transaction of motor club service in this state would be hazardous to its members and the motor club service-buying public in this state, or that it is insolvent;

(c) It refuses to remove or discharge, or terminate its relationship with a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude;

(d) It customarily or in the regular course of business compels claimants under its service contracts either to accept less than the amount due them or fewer services, or to bring suit against it to secure full payment of the amount of all services due;

(e) It conducts its business outside this state in such manner as

unjustly to discriminate against or prejudice the interests of the people of this state;

(f) It is affiliated with and is under the same general management or interlocking directorate or ownership as another motor club which transacts business in this state which does not have a certificate of authority therefor;

(g) It exceeds its charter powers of its certificate of authority;

(h) It refuses to be examined, or if its directors, managing officers, employees or representatives refuse to submit to examination or to produce its accounts, records and files for examination by the commissioner when required by him, or refuses to perform any legal obligation relative to the examination, the time and place of the examination to be specified by the commissioner,

(i) It misrepresents or has misrepresented its business to the public or transacts it fraudulently;

(j) It fails to file an annual statement as provided in section 30.

#### **Section 11. Hearings and Appeals.**

The provisions of Chapter 4 of Title 31, Utah Code Annotated 1953, shall apply in all matters pertaining to hearings and appeals under this act.

#### **Section 12. Power of Commission to Regulate.**

Insofar as the same may be applicable the commissioner shall have those powers set forth in Chapter 2 of Title 31, Utah Code Annotated 1953, in enforcing the provisions of this act and regulating the business of motor clubs.

#### **Section 13. Filing Agreement or Contract.**

A service agreement or contract shall be filed and approved in accordance with Section 31-19-9, Utah Code Annotated 1953.

#### **Section 14. Service Contracts Required.**

Motor clubs, shall be required to execute service contracts with their members.

#### **Section 15. Approval of Rates.**

Rates charged to holders of motor club service contracts shall not be inadequate, excessive, or discriminatory, and may be disapproved by the commission if they do not comply herewith. In making such determination the commissioner shall consider the type of motor club involved and the services it purports to extend.

#### **Section 16. Requirements of Service Contracts.**

A service contract shall not be executed, issued or delivered in the state unless it contains the following:

(1) The exact corporate or other name of the club.

(2) The exact location of its home office and of its usual place of business in the state, giving street number and city.

(3) A provision that the contract may be cancelled at any time by giving written notice thereof by either the club or the holder, and that the holder will, if the dues or membership fee has been paid thereupon

be entitled to the unused portion of the consideration paid for such contract, calculated on a pro-rata basis over the period of the contract, without any deductions, provided that motor club may make a reasonable minimum charge.

- (4) A provision plainly specifying:
  - (a) The services promised.
  - (b) That the holder will not be required to pay any sum, in addition to the amount specified in the contract for any services thus specified.
  - (c) The territory wherein such services are to be rendered.
  - (d) The date when such service will commence.
- (5) A statement in not less than fourteen point modern type at the head of said contract stating, "This is not an insurance contract."

#### **Section 17. Solicitation Certificate.**

A person shall not solicit or aid in the solicitation of another person to purchase a service contract or membership issued by a club not having a certificate of authority procured pursuant to this act.

#### **Section 18. Misrepresentation of Terms—Prohibited.**

A motor club or an officer or agent thereof shall not in any manner misrepresent the terms, benefits or privileges of any service contract or membership issued or to be issued by it.

#### **Section 19. Service Contract Binding on Club.**

Any service contract or membership made, issued or delivered contrary to any provision of this act shall, nevertheless, be valid and binding on the club.

#### **Section 20. Club Agent Must Procure License.**

No person shall act as a club agent in this state without first procuring a license to so act from the commissioner.

#### **Section 21. License Terms—Provisions—Penalties.**

(1) Application for a license as a club agent shall be made to the commissioner upon forms prescribed and furnished by him. As a part of, or in connection with, any application, the applicant shall furnish information concerning his identity, personal history, experience, business record and other pertinent fact which the commissioner may reasonably require.

(2) Only individuals shall be licensed as club agents.

(3) Any person willfully misrepresenting any fact required to be disclosed in any application shall be subject to the penalties provided in this act.

#### **Section 22. License Conditions.**

The commissioner shall not:

(1) Issue or renew any club agent's license except in compliance with this act.

(2) Issue or renew any club agent's license to, or to be exercised by, any person found by him to be untrustworthy or incompetent, or who has not established to the satisfaction of the commissioner that he is qualified therefor in accordance with the provisions of this act.

**Section 23. Agent to Comply With Provisions of Act.**

The commissioner shall license as a motor club agent only an individual who has otherwise complied with the provisions of this act, and who has furnished evidence satisfactory to the commissioner that he:

- (1) Is at least 21 years of age.
- (2) Has been a bona fide resident of this state for at least three months or is a resident of a state which will permit residents of this state to act as club agents in such other state.
- (3) Is a trustworthy person with a good reputation.
- (4) Has never been convicted of a felony.

**Section 24. Agent Not to Solicit Insurance.**

Nothing contained in the provisions of this act shall be construed to authorize any motor club agent to sell or solicit insurance or to act in any capacity other than that of motor club agent.

**Section 25. Commissioner to Prescribe Form of License.**

The commissioner shall prescribe the form of the club agent's license, but it shall contain:

- (1) The name of the licensee and his business address.
- (2) The date of issuance and the date of expiration.
- (3) The name of the represented motor club.

**Section 26. Agent's Licenses—Date—Fee.**

- (1) The club's agent's licenses shall be renewable on April 1st of each year.
- (2) The license fee is \$5.00 a year.

**Section 27. Commissioner May Suspend—Revoke Agent's License.**

The commissioner may suspend, revoke, or refuse to renew any club agent's license issued under section 23 for any of the following causes:

- (1) If the licensee violates or participates in the violation of any provision of section 23.
- (2) If the licensee has obtained or attempted to obtain any license through misrepresentation or fraud.
- (3) If the licensee has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity.
- (4) If the licensee has materially misrepresented the terms or effect of any contract, or has engaged in any fraudulent transaction.
- (5) If, in the conduct of his affairs under the license the licensee has shown himself to be incompetent, untrustworthy or a source of injury and loss to the motor club service-buying public.

**Section 28. Agent to Surrender License to Commissioner.**

The holder of any club agent's license which has been revoked or suspended shall immediately surrender the license certificate to the commissioner.

**Section 29. Hearing Before Revoking License.**

- (1) Except as provided in subsection 2, no club agent's license shall be suspended or revoked by the commissioner without providing an

opportunity to the licensee to be heard and produce evidence in his own behalf.

(2) A club agent's license shall be automatically forfeited and revoked if the licensee is convicted of a felony.

### **Section 30. File Financial Statement With Commissioner.**

(1) Each authorized motor club shall annually before the 1st day of March file with the commissioner a true statement of its financial condition, transactions, and affairs as at the 31st day of December preceding. The statement shall contain such information as may be reasonably required by the commissioner, and shall be verified by the oaths of at least two of the motor club's principal officers.

(2) The commissioner may suspend or revoke the certificate of authority of any motor club failing to file its annual statement when due or during any extension of time therefor which the commissioner, for good cause, may grant.

### **Section 31. Guaranteed Arrest Bond Certificate.**

(1) Any domestic or foreign insurance company, or surety company which has qualified to transact such business within this state may contract to become surety in an amount not to exceed \$200 each, for any guaranteed arrest bond certificates issued by an automobile club or association, by filing with the commissioner of this state a certificate thus to become surety. Such certificate shall be in a form which shall be prescribed by the commissioner and shall state the following:

(a) The name and address of the automobile club or clubs or automobile association or associations issuing the guaranteed arrest bond certificates of which the said company undertakes to be surety.

(b) The unqualified obligation of the company undertaking to become surety to pay the fine or forfeiture in an amount not to exceed \$200 or any person who fails to make an appearance to answer the charges for which said guaranteed arrest bond certificate is posted.

(2) Any guaranteed arrest bond certificate to which an insurance, fidelity insurance, or surety company has become surety as herein provided, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail or other bond in an amount not to exceed \$200, as a bail bond, to guarantee the appearance of such person in any court in the state, including all municipal courts in the state, at such time as may be required by the court, when the person is arrested for violation of any motor vehicle law of the state, or any motor vehicle ordinance of any municipality in the state, except for the offense of driving under the influence of intoxicating liquors or drugs, or for any felony. Any such guaranteed arrest bond certificates so posted as bail bond in any court in this state shall be subject to forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law or as may hereafter be provided by law. Any such guaranteed arrest bond certificate posted as a bail bond in any municipal court of the state shall be subject to forfeiture and enforcement provisions of the charter or ordinance of the particular municipality pertaining to bail bonds.

**Section 32. Violation a Misdemeanor.**

(1) Any person violating any of the provisions of this act is guilty of a misdemeanor.

**Section 33. Deposit in State Treasury.**

(1) All money collected by the commissioner under any provision of this act shall be deposited without deduction in the state treasury pursuant to the provisions of Section 31-14-2, Utah Code Annotated 1953.

**Section 34. Provision Exclusive for Motor Clubs.**

The provisions of this act shall apply exclusively to motor clubs. No other provision contained in Title 31, Utah Code Annotated 1953, and generally known as the Insurance Code and as relating to insurers within the State of Utah shall apply to motor clubs, except as otherwise provided herein, and such motor clubs shall be governed solely and exclusively by the provisions of this act.

Approved March 22, 1963.

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## LABOR

### CHAPTER 48

H. B. No. 23

(Passed February 15, 1963. In effect May 14, 1963)

#### EMPLOYMENT OF MINORS

##### **An Act Amending Section 34-5-2, Utah Code Annotated 1953, Relating to Employment of Minors, Lowering Age Limit to Fifteen Years.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 34-5-2, Utah Code Annotated 1953, is amended to read:

##### **34-5-2. Hours of Work Limited—Attendance at Part Time School Included.**

No minor under eighteen years of age shall be employed, permitted or suffered to work in, about, or in connection with any gainful occupation, except housework or agricultural work performed in or in connection with the child's own home and directly for the child's parent, guardian, or custodian, more than six consecutive days in any one week, or more than forty-four hours in any one week, or more than eight hours in any one day, except when employed in harvesting, packing or canning of perishable fruits or vegetables, or in the manufacture of containers for the same during the packing season; provided, that the hours of required attendance upon part-time school or classes shall be counted as part of the legal working day or week, nor shall any minor under fifteen years of age be so employed, permitted, or suffered to work before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening of any day; provided further, that in the harvesting of crops, persons fourteen years of age may be employed as early as

5 a.m.; provided, that boys over twelve may be employed in the sale or distribution of newspapers, magazines or periodicals between 6 a.m. and 7 p.m.; and outside of cities of the first and second class, between 6 a.m. and 8 p.m., except that in the discretion of the proper school official or of the industrial commission the hours may be altered in special cases. No minor under eighteen years of age shall be required or permitted to work for more than five hours from the time of beginning work without at least forty-five consecutive minutes for meal time, which shall not be included as part of the working hours of the day or week.

Approved February 15, 1963.

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## CHAPTER 49

S. B. No. 90

(Passed March 9, 1963. In effect July 1, 1963)

### WORKMEN'S COMPENSATION, EMPLOYER DEFINITION

**An Act Amending Sections 35-1-43, Utah Code Annotated 1953, as Amended by Chapter 62, Laws of Utah 1957, 35-1-53, Utah Code Annotated 1953, 35-1-65, 35-1-66, 35-1-67, 35-1-68, Utah Code Annotated 1953, as Amended by Chapter 57, Laws of Utah 1955, Chapter 62, Laws of Utah 1957, Chapter 55, Laws of Utah 1959, and Chapter 71, Laws of Utah 1961, 35-1-69, Utah Code Annotated 1953, as Amended by Chapter 57, Laws of Utah 1955, Chapter 62, Laws of Utah 1957, and Chapter 55, Laws of Utah 1959, 35-1-74, Utah Code Annotated 1953, as Amended by Chapter 57, Laws of Utah 1955, Chapter 55, Laws of Utah 1959, and Chapter 71, Laws of Utah 1961, and 35-1-78, Utah Code Annotated 1953, as Amended by Chapter 71, Laws of Utah 1961, relating to Workmen's Compensation; Providing That the Owner of a Sole Proprietorship May Be Covered Under the Workmen's Compensation Act, Providing for a Tax on Self-insurers and Payment Into a Special Fund, Providing for Credit for Payment of Tax, Providing for Compensation for Injury Aggravating Pre-existing Conditions, Providing a Basis for Apportioning Compensation and Medical Care, Providing for Increased Benefits, and Providing for the Destruction of Records.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Sections 35-1-43, Utah Code annotated 1953, as amended by Chapter 62, Laws of Utah 1957, 35-1-53, Utah Code Annotated 1953, 35-1-65, 35-1-66, 35-1-67, 35-1-68, Utah Code Annotated 1953, as amended by Chapter 57, Laws of Utah 1955, Chapter 62, Laws of Utah 1957, Chapter 55, Laws of Utah 1959, and Chapter 71, Laws of Utah 1961, 35-1-69, Utah Code Annotated 1953, as amended by Chapter 57, Laws of Utah 1955, Chapter 62, Laws of Utah 1957, and Chapter 55, Laws of Utah 1959, 35-1-74, Utah Code Annotated 1953, as amended by Chapter 57, Laws of Utah 1955, Chapter 55, Laws of Utah 1959, and Chapter 71,



Laws of Utah 1961, and 35-1-78, Utah Code Annotated 1953, as amended by Chapter 71, Laws of Utah 1961, are amended to read:

**35-1-43. "Employer", "Workmen" and "Operative" Defined.**

The words "employee", "workmen" and "operative," as used in this title, shall be construed to mean:

(1) Every elective and appointive officer, and every other person, in the service of the state, or of any county, city, town or school district within the state, serving the state, county, city, town or school district therein under any election or appointment, or under any contract of hire, express or implied, written or oral, including all officers and employees of the state institutions of learning.

(2) Every person, except agricultural laborers and domestic servants, in the service of any "employer" as defined in subdivision (2) of section 35-1-42, who employs one or more workmen or operatives regularly in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, including aliens, and minors whether legally or illegally working for hire, but not including any person whose employment is but casual and not in the usual course of trade, business or occupation of his employer.

(3) All lessees in mines or of mining property and the employees and sublessees of all such lessees shall, unless the lessee provides coverage as an employer under this chapter, be covered by compensation by the lessor under this chapter, and shall, in such event, be subject to this chapter and entitled to its benefits to the same extent as if they were employees of the lessor drawing such wages as are paid employees for similar or substantially similar work; provided, that the lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for such type of work.

(4) If the employer is a partnership, or sole proprietorship, such employer may elect to include as an "employee" within the provisions of of this act, any member of such partnership, or the owner of the sole proprietorship, devoting full time to the partnership or proprietorship business. In the event of such election the employer must serve upon the employer's insurance carrier and upon the commission written notice naming the partners to be covered and no partner shall be deemed an employee within this act until such notice has been given. For premium rate making the insurance carrier shall assume the salary or wage of such "employee" to be \$400.00 per month.

**35-1-53. Tax on Self-insurer.**

(1) Employer's who by authority of the Commission are authorized to pay compensation direct shall pay annually, on or before the first day of September in each year, a tax of the same percentage as required by law to be paid by insurance companies upon their premiums, based upon an amount equivalent to premiums, which would be paid by such employes, if insured in the state insurance fund; said tax to be computed and collected by the state tax commission and paid by it into the state treasury as provided in section 31-14-4. The state tax commission shall have access to all the records of the office of the

industrial commission for the purpose of computing and collecting such tax.

(2) Employers, who by authority of the commission are authorized to pay compensation direct, shall also pay annually, on or before the first day of September in each year, an additional tax of the same percentage as required by law to be paid by insurance companies writing workmen's compensation and occupational disease disability insurance upon their premiums, based upon an amount equivalent to premiums which would be paid by such employer if insured in the state insurance fund; said tax to be computed and collected by the state tax commission and paid by it into the state treasury to the credit of the special fund provided for in subdivision (1) of section 35-1-68; provided, however, that upon payment of said tax such employer shall be entitled to deduct the amount paid from any tax paid pursuant to subparagraph (1) of this section in the same manner as the deduction is allowed against insurance companies writing workmen's compensation or occupational disease disability insurance as provided in Section 31-14-4.

#### **35-1-65. Temporary Disability—Amount of Payments.**

In case of temporary disability, the employee shall receive sixty per cent of his average weekly wages so long as such disability is total, not to exceed a maximum of \$40.00 per week and not less than a minimum of \$25.00 per week, plus \$2.85 for a dependent wife and \$2.85 for each dependent minor child under the age of eighteen years, up to and including four such minor children, or a maximum of \$54.25 in case of a dependent wife and four or more such minor dependents; provided that where the wage earned at the time of the injury is less than \$25.00 per week, the amount of wages earned shall be the amount of compensation to be paid. In no case shall such compensation continue for more than six years from the date of the injury or exceed \$11,204.00 in the case of no dependent wife or minor children, as herein defined, or \$11,204.00 plus \$2.85 per week for a dependent wife and \$2.85 per week for each dependent minor child, as herein defined, up to a maximum of four such minor children or a maximum payment of \$15,126.00.

#### **35-1-66. Partial Disability—Scale of Payments.**

Where the injury causes partial disability for work, the employee shall receive, during such disability and for a period of not to exceed six years from the date of the injury, a weekly compensation equal to 60 per cent of the difference between his average weekly wages before the accident and the weekly wages he is able to earn thereafter, but not more than \$40.00 per week, and in addition thereto \$2.85 for a dependent wife and \$2.85 for each dependent minor child under the age of eighteen years, up to and including four, or a maximum of \$54.25 per week in the case of a dependent wife and four or more such dependent minor children.

In case the partial disability begins after a period of total disability, the period of total disability shall be deducted from the total period of compensation.

In no case shall the weekly payments continue after the disability ends, or the death of the injured person.

In the case of the following injuries the compensation shall be 60 percent of the average weekly wage, but not more than \$40.00 per week plus \$2.85 for a dependent's wife, as herein defined, and \$2.85 for each dependent minor child under the age of eighteen years, up to a maximum of four such dependent minor children, or a maximum of \$54.25 per week in case of a dependent wife and four or more such dependent minor children, to be paid weekly for the periods stated against such injuries respectively, and shall be in addition to the compensation herebefore provided for temporary total disability, to wit:

For loss of:

One arm at or near shoulder	200 weeks
One arm at elbow	180 weeks
One arm between the wrist and elbow	160 weeks
One hand	150 weeks
One thumb and the metacarpal bone thereof	60 weeks
One thumb at the proximal joint	30 weeks
One thumb at the second or distal joint	20 weeks
One first finger and the metacarpal bone thereof	30 weeks
One first finger at the proximal joint	20 weeks
One first finger at the second joint	15 weeks
One first finger at the distal joint	10 weeks
One second finger and the metacarpal bone thereof	30 weeks
One second finger at the proximal joint	15 weeks
One second finger at the second joint	10 weeks
One second finger at the distal joint	5 weeks
One third finger and the metacarpal bone thereof	20 weeks
One third finger at the proximal joint	12 weeks
One third finger at the second joint	8 weeks
One third finger at the distal joint	4 weeks
One fourth finger and metacarpal bone thereof	12 weeks
One fourth finger at the proximal joint	9 weeks
One fourth finger at the second joint	6 weeks
One fourth finger at the distal joint	3 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	180 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	150 weeks
One leg between the knee and ankle	140 weeks
One foot at the ankle	125 weeks
One great toe with the metatarsal bone thereof	30 weeks
One great toe at the proximal joint	15 weeks
One great toe at the second joint	10 weeks
One toe other than the great toe with the metatarsal bone thereof	12 weeks
One toe other than the great toe at the proximal joint	6 weeks
One toe other than the great toe at the distal joint	3 weeks
In the above cases permanent and complete loss of use shall be deemed equivalent to loss of the member or part thereof	
One eye by enucleation	120 weeks
Total blindness of one eye	100 weeks

For any other disfigurement or the loss of bodily function not otherwise provided for herein, such period of compensation as the commission shall deem equitable and in proportion as near as may be to compensation for specific loss as set forth in the schedule in this section but not exceeding in any case two hundred weeks.

The amounts specified in this section are all subject to the limitations as to the maximum weekly amount payable as specified in this section, and in no event shall more than a total of \$8,978.00 be required to be paid.

### **35-1-67. Permanent Total Disability — Amount of Payments — Vocational Rehabilitation—Procedure and Payments.**

In cases of permanent total disability the award shall be 60 percent of the average weekly wages for five years from date of injury, and thereafter 45 percent of such average weekly wages, but not to exceed a maximum of \$40.00 per week and not less than \$25.00 per week, plus \$2.85 for a dependent wife and \$2.85 for each dependent minor child under the age of 18 years up to a maximum of four such dependent minor children; provided, however, that in no case of permanent total disability shall the employer or its insurance carrier be required to pay more than \$15,800.00 and provided further, that a finding by the commission of permanent total disability shall in all cases be tentative and not final until such time as the following proceedings have been had:

Where the employee has tentatively been found to be permanently and totally disabled, it shall be mandatory that the industrial commission of Utah refer such employee to the division of vocational rehabilitation under the state board of education for rehabilitation training and it shall be the duty of the commission to order paid to such vocational rehabilitation division, out of that special fund provided for by Section 35-1-68, Utah Code Annotated 1953, as amended, subdivision 1, not to exceed \$753.00 for use in the rehabilitation and training of such employee; the rehabilitation and training of such employee shall generally follow the practice applicable under Section 35-1-69, Utah Code Annotated 1953, as amended, and relating to the rehabilitation of employees having combined injuries. If and when the division of vocational rehabilitation under the state board of education certifies to the industrial commission of Utah in writing that such employee has fully cooperated with the division of vocational rehabilitation in its efforts to rehabilitate him, and in the opinion of the division the employee may not be rehabilitated, then the commission shall order that there be paid to such employee weekly benefits at the rate of 45% of his average weekly earnings, but not to exceed \$40.00 per week. out of that special fund provided for by Section 35-1-68, Utah Code Annotated, 1953, as amended, for such period of time beginning with the time that the payments (as in this section provided) to be made by the employer or its insurance carrier terminate and ending with the death of the employee. No employee, however, shall be entitled to any such payments if he fails or refuses to cooperate with the division of vocational rehabilitation as set forth herein.

The division of vocational rehabilitation shall, at the termination of the vocational training of the employee, certify to the industrial

commission of Utah the work the employee is qualified to perform and thereupon the commission shall, after notice to the employer and an opportunity to be heard, determine whether the employee has, notwithstanding such rehabilitation, sustained a loss of bodily function.

The loss or permanent and complete loss of use of both hands or both arms, or both feet or both legs, or both eyes, or any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of this section and no tentative finding of permanent total disability shall be required in such instances; in all other cases, however, and where there has been rehabilitation effected but where there is some loss of bodily function, the award shall be based upon partial permanent disability.

In no case shall the employer be required to pay compensation for any combination of disabilities of any kind including loss of function, in excess of \$15,800.00.

### **35-1-68. Injury Causing Death—Burial Expenses—Filing Claim for Compensation.**

In case injury causes death within the period of three years, the employer or insurance carrier shall pay the burial expenses of the deceased as provided herein, and further benefits in the amounts and to the persons as follow:

(1) If there are no dependents, the employer and insurance carrier shall pay into the state treasury the sum of \$2,762.00. Any claim for compensation must be filed with the commission within one year from the date of the death of the deceased, and, if at the end of one year from the date of death of the deceased, no claim for compensation shall have been filed with the commission, the said sum of \$2,762.00 shall be paid at that time into the state treasury by the employer or the insurance carrier. Such payment shall be held in a special fund for the purposes provided in this title; the state treasurer shall be the custodian of such special fund, and the commission shall direct the distribution thereof.

(2) If there are wholly dependent persons at the time of the death, the payment shall be sixty per cent of the average weekly wage, but not to exceed a maximum of \$40.00 per week plus \$2.85 for a dependent wife and \$2.85 for each dependent child, to continue for the remainder of the period between the date of the death and not to exceed six years after the date of the injury, and shall not amount to more than a maximum of \$11,491.00 nor less than a minimum of \$3,014.00; provided that if the deceased had a dependent wife or minor children wholly dependent upon him at the time of death when said limit of \$11,491.00 shall be increased by \$511.00 for a dependent wife and \$511.00 for each dependent minor child up to four wholly dependent minor children or a maximum of \$14,046.00 in case of a dependent wife and four or more wholly dependent minor children.

(3) If there are partly dependent persons at the time of the death, the payment shall be sixty per cent of the average weekly wage, but not to exceed the maximum of \$40.00 per week, to continue for all of or such portion of the period of six years after the date of injury as the commission in each case may determine and shall not amount to

more than a maximum of \$8,303.00. The benefits provided for in this subdivision shall be in keeping with the circumstances and conditions of dependency existing at the date of injury, and any amount awarded by the commission under this subdivision must be consistent with the general provisions of this title.

(4) If there are wholly dependent persons and also partially dependent persons at the time of death, the commission may apportion the benefits as it deems just and equitable; provided, that the total benefits awarded to all parties concerned shall not exceed the maximum provided for by law.

### **35-1-69. Successive Permanent Partial Disabilities.**

(1) If any employee who has previously incurred a permanent injury, disease or congenital causes, sustains an industrial injury for which compensation and medical care is provided by this title that results in permanent incapacity which is substantially greater than he would have incurred if he had not had the pre-existing incapacity, compensation and medical care, which medical care and other related items are outlined in Section 35-1-81, Utah Code Annotated 1953, as amended, shall be awarded on the basis of the combined injuries, but the liability of the employer for such compensation and medical care shall be for the industrial injury only and the remainder shall be paid out of the special fund provided for in subdivision (1) of Section 35-1-68 hereinafter referred to as the "Special Fund."

A medical panel having the qualifications of the medical panel set forth in Section 35-2-56, shall review all medical aspects of the case and determine first, the total permanent physical impairment resulting from all causes and conditions including the industrial injury; second, the percentage of permanent physical impairment attributable to the industrial injury; and third, the percentage of permanent physical impairment attributable to previously existing conditions whether due to accidental injury, disease or congenital causes. The industrial commission shall then assess the liability for compensation and medical care to the employer on the basis of the percentage of permanent physical impairment attributable to the industrial injury only and the remainder shall be payable out of the said special fund. Amounts, if any, which have been paid by the employer in excess of the portion attributable to the said industrial injury shall be reimbursed to the employer out of said special fund.

(2) In addition the commission in its discretion may increase the weekly compensation rates to be paid out of such special fund, such increase to be used solely for the training of any employee coming within the provisions of this section as may be certified to the commission by the rehabilitation department of the state board of education as being eligible for training; provided, however, that in no case shall there be paid out of such special fund for rehabilitation an amount in excess of \$753.00.

### **35-1-74. Increase of Award to Children—Effect of Death, Marriage, Majority, or Termination of Dependency.**

In all cases where the award of compensation is increased \$2.85 for

a dependent wife or \$2.85 for each dependent minor child, as provided in this title, such increase in the amount of the award shall cease at the death, marriage, attainment of the age of eighteen years, or termination of dependency of each such child or upon the death or divorce of the wife of the employee.

**35-1-78. Award—Continuing Jurisdiction to Modify.**

The powers and jurisdiction of the commission over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings, or orders with respect thereto, as in its opinion may be justified, provided, however, that records pertaining to cases, other than those of total permanent disability or where a claim has been filed as in 35-1-99, which have been closed and inactive for a period of 10 years, may be destroyed at the discretion of the commission.

**Section 2. Effective Date.**

This act shall take effect July 1, 1963.

Approved March 12, 1963.

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**CHAPTER 50**

H. B. No. 249

(Passed March 8, 1963. In effect July 1, 1963)

**OCCUPATIONAL DISEASE**

**An Act Amending Sections 35-2-15 and 35-2-56, Utah Code Annotated 1953, as Amended by Chapter 59, Laws of Utah 1955, as Amended by Chapter 63, Laws of Utah 1957, as Amended by Chapter 56, Laws of Utah 1959, as Amended by Chapter 72, Laws of Utah 1961, Relating to Occupational Disease and Providing for Increased Benefits.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Section 35-2-15 and 35-2-56 Utah Code Annotated 1953, as amended, are amended to read:

**35-2-15. Benefits—Amounts—Permanent Total Disability—Vocational Rehabilitation—Procedure and Payments—Temporary Total Disability—Death—Dependents—Medical, Hospital and Burial Expenses.**

The benefits to which a disabled employee or his dependents shall be entitled under this act shall be based upon his average weekly wage computed under the formula set forth in section 35-1-75, Utah Code Annotated, 1953, as amended, and are to be limited as follows:

(a) In cases of permanent total disability the award shall be 60% of the average weekly wages for a period not to exceed five years, beginning with the date total disability began, and thereafter 45% of such average weekly wages, but not to exceed a maximum of \$40 per week and not less than \$25 per week, plus \$2.85 for a dependent wife and

\$2.85 for each dependent minor child under the age of 18 years up to a maximum of four such dependent minor children; provided, however, that in no case of permanent total disability shall the employer or its insurance carrier be required to pay more than \$15,800; and provided, further, that a finding by the commission of permanent total disability shall in all cases be tentative and not final until such time as the following proceedings have been had:

Where the employee has tentatively been found to be permanently and totally disabled, as in this section provided, it shall be mandatory that the industrial commission of Utah refer such employee to the division of vocational rehabilitation under the state board of education for rehabilitation training and it shall be the duty of the commission to order paid to such vocational rehabilitation division, out of that special fund provided for by section 35-1-68, Utah Code Annotated 1953, as amended, subdivision 1, not to exceed \$753 for use in the rehabilitation and training of such employee, the rehabilitation and training of such employee shall generally follow the practice applicable under section 35-1-69, Utah Code Annotated 1953, as amended and relating to the rehabilitation of employees having combined injuries. If and when the division of vocational rehabilitation under the state board of education certifies to the industrial commission of Utah in writing that such employee has fully cooperated with the division of vocational rehabilitation in its efforts to rehabilitate him, and in the opinion of the division the employee may not be rehabilitated, then the commission shall order that there be paid to such employee weekly benefits at the rate of 45% of his average weekly earnings, but not to exceed \$40 per week, out of that special fund provided for by section 35-1-68, Utah Code Annotated 1953, as amended, for such period of time beginning with the time that the payments (as in this section provided) to be made by the employer or its insurance carrier terminate and ending with the death of the employee. No employee, however, shall be entitled to any such payments if he fails or refuses to cooperate with the division of vocational rehabilitation as set forth herein.

The division of vocational rehabilitation shall, at the termination of the vocational training of the employee, certify to the industrial commission of Utah the work the employee is qualified to perform, and thereupon the commission shall, after notice to the employer and an opportunity to be heard, determine whether the employee has notwithstanding such rehabilitations, sustained a loss of bodily function.

In no case shall the employer be required to pay compensation for any combination of disabilities of any kind including loss of function, in excess of \$15,800.

(b) In cases of temporary total disability the award shall be 60% of the average weekly wages as determined under section 35-1-75, Utah Code Annotated 1953, as amended, but not to exceed a maximum of \$40 a week and not less than \$25 per week, plus \$2.85 for a dependent wife, and \$2.85 for each dependent minor child under the age of 18 years up to a maximum of 4 such dependent minor children, such payment to be made for a period not exceeding 52 weeks; in the event total disability continues in excess of 52 weeks, then the commission shall apply the rehabilitation provisions of this section hereinabove set forth.



(c) In case of death those persons who were wholly dependent upon the employee at the time of death shall be entitled to and shall receive the difference, if any, between \$11,491 and the amounts the employer may have paid to the employee on account of permanent total, total temporary and partial permanent disability provided that if the deceased had a dependent wife or minor children wholly dependent upon him at the time of death, then said limit of \$11,491 shall be increased by \$511 for a dependent wife and \$511 for each such dependent minor child up to four wholly dependent minor children for a maximum of \$14,046 in case of a dependent wife and four wholly dependent minor children, the payments to the dependents to be made at the same weekly rate as the payments made to the deceased employee immediately preceding his death. If the dependents of the deceased were but partially dependent upon him at the time of death, then the compensation payable shall be in such amount and at such times as the commission may determine but shall not exceed two-thirds of the amount that would have been payable (as in this paragraph provided) if the dependents had been wholly dependent at the time of death.

(d) In the event the employee becomes totally disabled from an occupational disease, the employer shall furnish and pay for such medical service, hospitalization and medicines as may be reasonably required, but not to exceed the sum of \$1,283.33; except that in special cases of prolonged hospitalization the commission may, at its discretion, increase the amount to a maximum of \$1,925.01.

(e) In case death results from such occupational disease the employer shall pay not to exceed \$525 burial expenses.

**35-2-56. Partial Permanent Disability From Occupational Disease—  
Imposition of Liability—Determination of Disability—Medical Panel—  
Rehabilitation Benefits.**

I. There is imposed upon the employer a liability for the payment of benefits, as hereinafter provided, to every employee who becomes partially and permanently disabled and such disability is primarily caused or contributed to by a disease or injury to health arising out of or in the course of employment, subject however to the following conditions:

(a) No compensation shall be paid when the last day of injurious exposure of the employee to the hazards of the occupational disease shall have occurred prior to July 1, 1941.

(b) No compensation shall be paid unless such partial disability results within two years prior to the day upon which claim for such compensation was filed with the industrial commission of Utah.

(c) No compensation shall be paid unless the partial disability results within two years of the last day in which the employee was exposed to the occupational disease.

II. It is recognized that the measurement of partial permanent disability is a highly technical and difficult task and should be placed in the hands of physicians specially trained for the care and treatment of the occupational disease involved, and that particularly in cases of silicosis such determination should be by physicians limiting largely

their practice to diseases of the chest; that the measurement of the extent of such disability should not be determined by physicians in general practice nor by laymen. Where a claim for compensation based upon partial permanent disability due to an occupational disease is filed with the commission, the commission shall appoint an impartial medical panel to consist of not less than three physicians specializing in the treatment of the disease or condition involved in the claim, and such medical panel shall make such study, take such X-rays and perform such tests as the panel may determine and certify to the commission the extent, if any, of the permanent disability of the claimant from performing work for remuneration or profit, and whether the sole cause of such partial permanent disability, in the opinion of the panel, results from the occupational disease and whether any other cause or causes have aggravated, prolonged, accelerated or in anywise contributed to the disability, and if so, the extent (in percentage) to which such other cause or causes has so contributed to the disability. The report of the panel shall be made to the commission in writing and shall be substantially the following form:

**REPORT OF MEDICAL PANEL**

**Partial Permanent Disability Cases**

To the Industrial Commission of Utah  
 State Capitol Building  
 Salt Lake City, Utah

Re: \_\_\_\_\_, Claimant  
 Claim No. \_\_\_\_\_

The medical panel, composed of the undersigned physicians, has completed its study and examination of the above named claimant with respect to the measurement of the ability of the claimant to perform physical labor\* (but without regard to the education, experience or training of the claimant) and on the assumption that the normal person functions at 100%, finds as follows:

(1) Extent of Permanent Partial Disability  
 from all causes (if any)

\* (2) Specific causes of such disability:

a. Occupational Disease (if any)

Name of occupational disease _____	Percentage _____	Percentage _____
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b. Other diseases or injuries \_\_\_\_\_

Names of such diseases or injuries \_\_\_\_\_

c. Other contributing factors \_\_\_\_\_

TOTAL

(MEDICAL PANEL)

Dated \_\_\_\_\_, 19\_\_\_\_.

\*Sec. \_\_\_\_\_ 1949 Session Laws \_\_\_\_\_ Utah, defines partial perma-

nent disability as: "partial permanent disability," as herein used, is defined as that pathological condition directly resulting from an occupational disease and causing substantial physical impairment, evidenced by objective medical and clinical findings readily demonstrable, and which has reduced the earning capacity of the employee, excluding, however, total disability cases.

\*\*The sum of the percentage under (2) a, b, and c should equal the percentage of (1). and the commission shall promptly distribute by mail full copies of such report to the claimant, employer against whom compensation is claimed and the insurance carrier. Thereafter any such party shall have ten days to object, in writing, to such report, and if no objections are filed with the commission within such period, the percentage of partial disability caused solely by the occupational disease and so certified by the medical panel shall be deemed accepted. The expense of such study and certification shall be paid out of the fund provided for by 35-1-68, Utah Code Annotated 1963, as amended and such study and certification shall be a part of the record. If objections to such reports are filed, then it shall be the duty of the commission to determine the percentage of such partial permanent disability after formal hearing, and at such formal hearing the party objecting must show by the weight of the evidence the extent of such claimed partial permanent disability and on appeal the evidence shall be reviewed as in equity cases, notwithstanding section 35-2-38, Utah Code Annotated 1953.

III. Where an employee has been found to be partially and permanently disabled by reason of an occupational disease, as in this section provided, and the commission further finds that the employee is unable to obtain employment in his usual trade or occupation, or on application of either the employee or employer the commission finds that it is to the best interest of the employee so partially and permanently disabled by reason of an occupational disease that he no longer works at his usual trade or occupation, then it shall be the duty of the commission to order that there be paid to the division of vocational rehabilitation of the state board of education out of that special fund provided for by section 35-1-68, Utah Code Annotated 1953, as amended, subdivision 1, not to exceed \$753 for use in the rehabilitation and training of such employee, such rehabilitation to be directed and controlled by such division of rehabilitation acting in conjunction with the industrial commission of Utah and shall generally follow the practice applicable under section 35-1-69, Utah Code Annotated 1953, as amended, and relating to the rehabilitation of employees having combined injuries.

IV. The benefits imposed upon the employer and to which an employee found, as in this section above provided, to be partially permanently disabled, shall be entitled under this act, are limited to the following:

During those weeks in which the employee is actively in training under the division of rehabilitation, as in this section above referred to, the employee shall receive \$40 per week for not to exceed 10 weeks, or a total of \$400 such payment to be made at four-week intervals and upon the filing with the commission at two-week intervals of a certificate by

the division or rehabilitation that the employee is cooperating with such division in his rehabilitation training.

At the termination of such training in rehabilitation, the employee shall be paid \$21.50 a week at four-week intervals until such time as the total payments so made, plus the weekly payments received by the employee during rehabilitation training, equals a sum equivalent to that amount determined under the following formula:

By applying the percentage of partial permanent disability resulting from the occupational disease and determined by the medical panel (or in case of formal hearing, then by the commission) to the amount of \$4,309. For example: Assume a finding by the medical panel that the employee has sustained partial permanent disability from an occupational disease to the extent of 20% loss of bodily function, 20% of \$4,309 equals \$862. The amount payable would therefore be:

10 weeks rehabilitation	\$400
Balance at intervals of 4 weeks	\$462
<b>TOTAL</b>	<b>\$862</b>

Notwithstanding anything hereinabove provided, payments for partial permanent disability shall not exceed in any one case an aggregate of \$4,309 and all payments so made shall be credited to the employer and deducted from any award which might ultimately be made should the employee subsequently become totally and permanently disabled.

#### **Section 2. Effective Date.**

This act shall take effect July 1, 1963.

Approved March 12, 1963.

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## **LABOR—INDUSTRIAL COMMISSION**

### **CHAPTER 51**

H. B. No. 275

(Passed March 11, 1963. In effect March 14, 1963)

### **STATE INSURANCE FUND**

**An Act Amending Section 35-3-16, Utah Code Annotated 1953, Relating to Tax on State Insurance Fund Premiums; Providing for Payment of Tax Into Special Fund and Credit for Payment of Tax.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 35-3-16, Utah Code Annotated 1953, is amended to read:

#### **35-3-16. Tax on Premium.**

(1) Upon all premiums received for insurance written by the department of finance in the state insurance fund, excepting those amounts received from the state and its several departments and from counties, cities, towns and school districts, the department of finance shall annually, on or before the first day of September in each year, pay to the state tax commission from the state insurance fund a tax of the same percentage as is required by law to be paid by insurance companies; such

tax to be deposited by the state tax commission with the state treasurer and credited by him to the state general fund.

(2) The department of finance shall also pay to the state tax commission a tax of the same percentage as required by law to be paid by insurance companies writing workmen's compensation or occupational disease disability insurance; such tax shall be deposited by the state tax commission with the state treasurer and credited by him to the special fund provided for in subsection (1) of Section 35-1-68; provided, however, that said additional tax paid shall be deducted from any tax required to be paid pursuant to subsection (1) of this section.

### **Section 2. Effective Date.**

This act shall take effect upon approval.

Approved March 14, 1963.

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## **CHAPTER 52**

H. B. No. 34

(Passed February 27, 1963. In Effect May 14, 1963)

### **UNEMPLOYMENT COMPENSATION**

**An Act Amending Sections 35-4-3, 35-4-4, 35-4-5, 35-4-7, 35-4-22, and 35-4-26, Utah Code Annotated 1953, as Amended by Chapter 60, Laws of Utah 1955, Chapter 64, Laws of Utah, 1957, Chapter 57, Laws of Utah, 1959, and Chapter 73, Laws of Utah, 1961, relating to Unemployment Compensation; Increasing Qualifying Wages; Redefining Weeks of Employment; Redefining Eligibility of Students; Providing for Rate Computation Based on Total Wages; Redefining Experience Factors; Establishing a Statutory Table of Rates Based on the Condition of the Reserve Fund; Defining Terms; Providing for the Deposit of Securities to Guarantee Payment of Contributions and Redefining Taxable Wages.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Sections Amended.**

Sections 35-4-3, 35-4-4, 35-4-5, 35-4-7, 35-4-22, and 35-4-26, Utah Code Annotated 1953, as amended by Chapter 60, Laws of Utah, 1955, Chapter 64, Laws of Utah, 1957, Chapter 57, Laws of Utah, 1959 and Chapter 73, Laws of Utah, 1961, are amended to read:

#### **35-4-3. Benefits.**

(a) Benefits shall become payable from the fund to any individual who hereafter is or becomes unemployed and eligible for benefits. All benefits shall be paid through the employment offices or other agencies designated by the commission in accordance with such regulations as the commission may prescribe.

(b) An individual's "weekly benefit amount" shall be an amount equal to one twenty-sixth (computed to the next higher multiple of \$1.00) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, but not less than \$10 nor more than the amount determined as follows:

On or before the fifteenth day of April of each year the total wages reported on contribution reports for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported on contribution reports pursuant to the regulations of the commission for the preceding year by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. One-half of this amount rounded to the nearest dollar (an even one-half cent or one-half dollar shall be rounded to the next higher multiple) shall constitute the maximum "weekly benefit amount" paid any individual whose benefit year commences on or after the first day of the first full calendar week in July of such year and prior to the first day of the first full calendar week of July of the next following year; provided, however, that the "weekly benefit amount" of an individual who is receiving, or who is eligible to receive, retirement benefits by reason of his past performance of personal services shall be the "weekly benefit amount" which is computed pursuant to this section less 50% (disregarding any fraction of \$1.00) of his primary retirement benefits which are attributable to a week.

The weekly benefit amount and the potential benefits payable to an individual who, subsequent to the commencement of his benefit year, becomes or is determined to be eligible to receive retirement benefits or increased retirement benefits, shall be recomputed effective with the first calendar week during his benefit year with respect to which he is eligible to receive retirement benefits or increased retirement benefits. His new weekly benefit amount shall be determined as hereinabove provided. As recomputed his total benefits potentially payable, commencing with the effective date of the recomputation, shall be equal to his recomputed weekly benefit amount times the quotient obtained by dividing his potential benefits unpaid prior to such recomputation by his initial weekly benefit amount (disregarding fractions).

(c) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wage (if any) payable to him with respect to such week which is in excess of 50% (disregarding any fraction of \$1.00) of his weekly benefit amount or \$12, whichever is the lesser, plus any fraction of a dollar, except that the total wages (which are in excess of any fraction of a dollar) of a "partially unemployed individual" (as defined by regulations of the commission) payable to him with respect to such benefit week shall be deducted from his weekly benefit amount; provided that for the purpose of this subsection the term "wages" shall not include grants (earned or otherwise) paid to him as public assistance.

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits determined by multiplying his weekly benefit amount times the number which appears in the following schedule on the same line on which in the left-hand column appears the ratio that the individual's annual earnings is to his high quarter's earnings, which ratio shall be computed as follows:

To determine an individual's ratio of total wages during his base pe-

riod to his high quarter's earnings, his total wages for insured work paid during the base period shall be divided by his total wages for insured work paid during that quarter of his base period in which his total wages were highest (computed to the nearest 1/10th); provided that when an individual's total wages for insured work paid during the highest quarter of his base period is less than \$260, the ratio for such an individual shall be determined on the basis of the ratio that his annual earnings are to \$260.00; and provided further that any individual whose total wages for insured work paid during his base period are less than \$700.00 shall not be eligible for benefits.

Ratio of Total Wages During Base Period To High Quarter	Maximum Benefits Potentially Payable (Number of Times Wkly. Benefit Amt.)
Less than 1.6 .....	10
1.6 but less than 1.8 .....	12
1.8 but less than 2.0 .....	14
2.0 but less than 2.2 .....	16
2.2 but less than 2.4 .....	18
2.4 but less than 2.6 .....	20
2.6 but less than 2.8 .....	22
2.8 but less than 3.0 .....	25
3.0 but less than 3.3 .....	30
3.3 or more .....	36

(e) Notwithstanding any other provisions of this act the commission in its discretion may by regulation prescribe: (1) that the existence of unemployment, eligibility for benefits and the amount of benefits payable shall be determined, in the case of any otherwise eligible claimant who, within a week or other period of unemployment is separated from or secures work on a regular attachment basis for that portion of the week or other period of unemployment occurring before or after such separation from or securing of work; (2) in the case of individuals working on a regular attachment basis, eligibility for benefits and the amount of benefits payable for periods of unemployment longer than a week;

Provided such regulations are reasonably calculated to secure general results substantially similar to those provided by this act with respect to weeks of unemployment.

(f) The Commission shall, in all cases involving actual or potential disqualifying issues and prior to the payment of benefits to an eligible individual, notify such individual's most recent employer of the eligibility determination.

(g) Upon written request of an employee made pursuant to regulations of the commission, all remuneration for insured work paid to an employee during his base period in the form of a bonus or lump sum payment shall, for benefit purposes, be apportioned to the calendar quarters in which the remuneration was earned.

#### 35-4-4. Eligibility of Individual.

An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the commission that:

(a) He has made a claim for benefits with respect to such week in accordance with such regulations as the commission may prescribe.

(b) He has registered for work at, and thereafter continued to report at, an employment office, in accordance with such regulations as the commission may prescribe, except that the commission may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provided, that no such regulation shall conflict with Section 35-4-3(a).

(c) He is able to work and is available for work.

(d) He has been unemployed for a waiting period of one week with respect to each benefit year. No week shall be counted as a week of unemployment for the purpose of this subsection:

(1) Unless it occurs within the benefit year which includes the week with respect to which he claims benefits;

(2) If benefits have been paid with respect thereto;

(3) Unless the individual was eligible for benefits with respect thereto as provided in Sections 35-4-3, 35-4-4, and 35-4-5, except for the requirement of this subsection.

(e) He has furnished the commission such separation and other reports containing such information as the commission may by regulation prescribe; provided that this provision shall not apply if he proves to the satisfaction of the commission that he had good cause for failing to furnish such reports. If any employer fails to furnish reports concerning separation and employment as required by this act and regulations adopted pursuant thereto the commission shall on the basis of such information as it may obtain, determine the eligibility and insured status of any individual affected by such failure and such employer shall not be deemed to be an interested party to any such determination.

(f) He has during his base period performed services (or was on compensable leave status) in employment for employers for which he was entitled to receive wages for not less than nineteen cumulative calendar weeks in each of which his earnings were at least \$20.00.

### **35-4-5. Eligibility for Benefits.**

An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

(a) For the week in which he has left work voluntarily without good cause, if so found by the commission, and for not less than one or more than the five next following weeks, as determined by the commission according to the circumstances in each case, provided that when such individual has had no bona fide employment between the week in which he voluntarily left such work without good cause and the week in which he filed for benefits he shall be so disqualified for the week in which he filed for benefits and for not less than one or more than the five next following weeks.

(b) (1) For the week in which he has been discharged for misconduct (not constituting a crime) connected with his work, if so found by the commission, and for not less than one or more than the nine fol-



lowing weeks, as determined by the commission in each case according to the seriousness of the misconduct.

(2) For the week in which he was discharged for dishonesty constituting a crime in connection with his work as shown by the facts together with his admission, or as shown by his conviction in a court of competent jurisdiction of a crime in connection with such dishonesty and for the 51 next following weeks, provided that when by reason of his alleged dishonesty in connection with his work, such individual is held in legal custody or is free on bail, any determination of his eligibility shall be held in abeyance pending his release or conviction.

(c) If the commission finds that, being unemployed or otherwise eligible for benefits, he has failed without good cause, either to properly apply for available suitable work, or to accept a referral to suitable work when offered him by the employment office or to accept suitable work when offered him by an employer or by the employment office, or to return to his customary self-employment (if any) when so directed by the commission. Such ineligibility shall continue for the week in which such failure occurred and for not less than one or more than the five next following weeks, as determined by the commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his prior earnings and experience, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) if the position offered is vacant due directly to a strike, lockout or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week in which it is found by the commission that his unemployment is due to a stoppage of work which exists because of a strike involving his grade, class, or group of workers at the factory or establishment at which he is or was employed.

(1) If the commission, upon investigation, shall find that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to such plan, or agreement to foment a strike, shall be eligible for benefits; provided however, that if the commission, upon investigation, shall find that such strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the State of Utah or of the United States pertaining to hours, wages, or other conditions of work, such strike shall not render the workers ineligible for benefits.

(2) If the commission upon investigation, shall find that the employer, his agent, or representative, has conspired, planned or agreed with any of his workers, their agents, or representatives to foment a strike, such strikes shall not render the workers ineligible for benefits.

(e) For the week with respect to which he had wilfully made a false statement of representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this act, and for the 51-week period immediately following and until he has repaid to the fund all monies he received by reason of his fraud and which he received during such following 51-week disqualification period, provided that determination under this subsection shall be made only upon a sworn written admission, or after due notice and recorded hearing; provided that when a claimant waives the recorded hearing a determination shall be made based upon all of the facts which the commission, exercising due diligence, has been able to obtain; and provided by this act for appeals from other benefit determinations.

(f) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or the United States, provided, that if the appropriate agency of such other state or of the United States finally determined that he is not entitled to such unemployment benefits, this disqualification shall not apply.

(g) For any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance; unless the major portion of his wages for insured work during his base period was for services performed while attending school, provided, however, that notwithstanding the provisions of this subsection an otherwise eligible individual shall not be ineligible to receive benefits while attending night school, a part-time training course, or a course approved by the commission; and provided further that satisfactory attendance and satisfactory progress in a course approved by the commission shall be evidence of availability.

(h) For any week (1) within the twelve calendar weeks prior to the expected date of such individual's childbirth and within the 6 calendar weeks after the date of such childbirth; and (2) during any week of unemployment when it is found by the commission that her total or partial unemployment is due to pregnancy.

(i) For the week in which she voluntarily left work to marry or to perform the customary duties of a housewife and for each week thereafter until subsequent to leaving such work she has as a demonstration of her desire to work and availability for work performed personal services in bona fide work and been paid therefor wages of not less than \$100, provided, that the foregoing provisions of this subsection shall not apply after a change in conditions whereby she has become the main support of herself or her immediate family.

(j) For any week with respect to which he is receiving, has received, or is entitled to receive remuneration in the form of

- (1) Wages in lieu of notice, or a dismissal or separation payment:
- (2) Accrued vacation or terminal leave payment

Provided that if such remuneration is less than the benefits which would otherwise be due, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced as provided in Section 35-4-3 (c).

#### **35-4-7. Contributions.**

(a) (1) On and after January 1, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act with respect to wages for employment. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(b) Each employer shall, except as provided in subsection (c) of this section, pay contributions equal to two and seven-tenths per cent of wages paid by him during the calendar years occurring after December 31, 1955; provided that each employer who is not a "qualified employer" shall pay contributions equal to two and seven-tenths per cent of wages paid by him during the calendar year 1955.

(c) (1) As used in this section:

(A) "Computation date" means January first of any year, the first such date being January 1, 1958.

(B) "Cut-off date" means February 15 with respect to contribution rates effective for calendar years occurring after December 31, 1957.

(C) "Qualified employer" means any employer who: was an employer as defined in this act during each of the twelve consecutive calendar quarters immediately preceding the computation date; and had employment in each of the three completed calendar years immediately preceding the computation date; and with respect to such three calendar years had filed all contribution reports prescribed by the commission by the cut-off date.

A rate of less than 2.7% shall be effective January 1 of any contribution year only with respect to those qualified employers who on or before March 31 of such year had (except for amounts due pursuant to determinations which have not become final) paid all contributions due on the contribution reports prescribed by the commission with respect to the three calendar years immediately preceding the computation date; provided, that the qualified employer who after March 31 pays all such contributions shall, for the current contribution year, be assigned a reduced rate effective with the first day of the calendar quarter in which such payment was made.

If an employer has acquired all or substantially all the assets of another employer and such other employer has discontinued operations upon such acquisition, the period of liability with respect to the filing of contribution reports, the payment of contributions, and the payrolls of both such employers during the three previous calendar years shall be jointly considered for the purpose of determining and establishing the acquiring party's qualifications for an experience rating classifica-

tion; provided that the transferring employer shall be divested of his payroll experience.

When an employer or prospective employer has acquired an operating department, section, division, or any substantial portion of the business or assets of any employer which is clearly segregable and identifiable, the entire payroll experience of the transferring employer shall be divided between the transferring and acquiring employers in proportion to the payroll for the four preceding completed calendar quarters attributable to the operating assets conveyed and retained; provided further, that the rate of the acquiring employer for the current contribution year shall be that rate which is assigned pursuant to regulations of the commission.

Any employing unit or prospective employing unit which acquired all or part of the payroll experience of an employer shall, for all purposes of this act, be an employer as of the date of such acquisition.

When an employer, as provided in this subsection, has been divested of his payroll experience by transferring all of his business to another and by ceasing operations as of the date of the transfer, such transferring employer shall, notwithstanding the provisions of Section 35-4-8, cease to be an employer (as defined by this act) as of the date of such transfer.

(D) "Reserve" means that amount of money in the fund as of the computation date, exclusive of monies transferred to the fund under the provisions of the Federal Employment Security Administrative Financing Act of 1954, which have been appropriated or are subject to appropriation by the state legislature.

(E) "Total wages" means all remuneration paid by an employer to employees for insured work.

(F) "Contribution year" means any calendar year beginning on January 1 and ending on December 31.

(G) "Qualifying period" means the three calendar year period immediately preceding the contribution year.

(H) (1) "Average quarterly variation ratio" shall be computed by (a) dividing the payroll or if adjusted, the adjusted payroll for that quarter in each of the prior years of an employer's qualifying period which corresponds to the respective quarter in which a stoppage of work due to a strike existed, by the payroll or adjusted payroll for the respective quarter immediately preceding such corresponding quarter, and (b) totalling the ratios thus obtained and dividing by the number of such ratios.

(2) "Adjusted payroll" means the estimated payroll to be substituted for an employer's actual payroll for the calendar quarter or quarters in which there was a decrease in such employer's payroll due to a stoppage of work which existed because of a strike in his factory or establishment. An employer's adjusted quarterly payroll for that quarter in which such stoppage of work existed shall be determined by multiplying each such payroll or adjusted payroll for the quarter immediately preceding the quarter in which such stoppage of work existed by the average quarterly variation ratio computed to the fourth decimal place and the remaining fraction, if any, disregarded.

(3) "Payroll" as used in this section means total wages.

(1) "Employer's experience factor" means the figure established in the following manner:

(1) The sums of the calendar year decrease percentages of total wages in regard to the three consecutive calendar years immediately preceding the computation date shall be established, each such percentage to be obtained by dividing any decrease of total wages of a qualified employer in any calendar year from the preceding calendar year by the amount of the total wages in such preceding calendar year, each division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded.

Each qualified employer shall be assigned that figure, designated as calendar year factor, which is listed below on the same horizontal line on which the sum of such employer's calendar year decrease percentages of total wages appears.

Sum of Calendar Year Decrease Percentages	Calendar Year Factor
Less than 5% .....	12
5% or more but less than 7.5% .....	11
7.5% or more but less than 10% .....	10
10% or more but less than 12.5% .....	9
12.5% or more but less than 15% .....	8
15% or more but less than 17.5% .....	7
17.5% or more but less than 20% .....	6
20% or more but less than 25% .....	5
25% or more but less than 30% .....	4
30% or more but less than 40% .....	3
40% or more but less than 50% .....	2
50% or more but less than 60% .....	1
60% or more .....	0

(2) The sums of the quarterly decrease percentages of total wages in regard to the three consecutive calendar years immediately preceding the computation date shall be established, each such percentage to be obtained by dividing any decrease of the total wages paid by a qualified employer to all of his employees in any calendar quarter from the preceding quarter by the amount of the total wages paid by him to all his employees in such preceding quarter, each division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded.

Each qualified employer shall be assigned that figure, designated as quarterly factor, which is listed below on the same horizontal line on which the sum of such employer's quarterly decrease percentages of total wages appears.

Sum of Quarterly Decrease Percentages	Quarterly Factor
Less than 40% .....	12
40% or more but less than 50% .....	11
50% or more but less than 60% .....	10
60% or more but less than 70% .....	9
70% or more but less than 80% .....	8
80% or more but less than 90% .....	7
90% or more but less than 100% .....	6
100% or more but less than 120% .....	5
120% or more but less than 150% .....	4
150% or more but less than 200% .....	3
200% or more but less than 250% .....	2
250% or more but less than 300% .....	1
300% or more .....	0

(3) In accordance with the calendar years of liability for contribution under this section, each qualified employer shall be assigned that figure, designated as age factor, which is listed below on the same horizontal line on which there appears the number of full consecutive calendar years preceding the computation date during which the employer has been liable for contributions hereunder.

Years of Liability for Contributions	Age Factor
8 years or more .....	5
4 years or more but less than 8 years .....	4
Less than 4 years .....	3

(4) Provided that in the determination of the annual and quarterly decrease percentages of any employer's payroll in whose factory or establishment there was in any year in the qualifying period of such employer, a stoppage of work due to a strike which caused a decrease in such employer's payroll of such magnitude that his actual quarterly and annual payroll caused by such a decrease or decreases when used with other annual and quarterly payroll decreases, if any, in his qualifying period would cause an increase in such employer's contribution rate, then such resulting loss of payroll caused by such stoppage of work shall be eliminated as a factor in such determination by using the adjusted payroll as computed pursuant to subsection (H) of this section.

The adjusted quarterly payroll shall be used as a factor in obtaining annual and quarterly decreases for an employer so long as such quarters remain in such employer's qualifying period.

The sum of the qualified employer's calendar year factor, quarterly factor and age factor constitute such "employer's experience factor."

(2) (A) Qualified employers shall be grouped into ten classes, to be designated as classes I, II, III, IV, V, VI, VII, VIII, IX, and X, respectively, in accordance with their experience factor.

Each qualified employer shall be in the class listed below on the same horizontal line on which his experience factor appears, and each qualified employer shall pay the contribution rate assigned to his class pursuant to the provisions of Paragraph (B) of this subsection.

Employer's Experience Factor	Class
29-28	I
27-26	II
25-23	III
22-20	IV
19-17	V
16-14	VI
13-11	VII
10-8	VIII
7-5	IX
4	X

(B) When the reserve with respect to total wages for the calendar year next preceding the computation date bears a percentage relationship as shown on the left-hand side of the table below, the contribution rates for employer classes to become effective January 1, 1964, and thereafter on January 1 of each year shall be the rates shown on the same horizontal line of the table opposite the applicable percentage ratio of the reserve to such total wages.

Reserve Per Cent of Total Wages	Class Rates				
	Class I	Class II	Class III	Class IV	Class V
At least 6.00%	.7%	.9%	1.0%	1.2%	1.4%
5.00 to 5.99%	.9%	1.0%	1.2%	1.4%	1.6%
4.00 to 4.99%	1.0%	1.2%	1.4%	1.6%	1.8%
3.00 to 3.99%	1.1%	1.3%	1.5%	1.7%	1.9%
2.00 to 2.99%	1.4%	1.6%	1.8%	2.0%	2.2%
1.40 to 1.99%	1.7%	1.9%	2.1%	2.3%	2.5%
Less than 1.40%	2.7%	2.7%	2.7%	2.7%	2.7%
	Class VI	Class VII	Class VIII	Class IX	Class X
At least 6.00%	1.6%	1.8%	2.1%	2.3%	2.7%
5.00 to 5.99%	1.8%	2.0%	2.2%	2.5%	2.7%
4.00 to 4.99%	2.0%	2.2%	2.4%	2.6%	2.7%
3.00 to 3.99%	2.1%	2.3%	2.5%	2.6%	2.7%
2.00 to 2.99%	2.3%	2.4%	2.6%	2.7%	2.7%
1.40 to 1.99%	2.7%	2.7%	2.7%	2.7%	2.7%
Less than 1.40%	2.7%	2.7%	2.7%	2.7%	2.7%

(3) On written request made by an employer, corrections or modifications of such employer's total wages shall be taken into account for the purpose of redetermining his contribution rate; provided that such request is made to the department not later than the end of the calendar year following the year in which the contribution rate is assigned. The commission, may within a like period upon its own initiative, redetermine an employer's contribution rate.

(4) No contribution rate in an amount of less than two and seven-tenths percent shall be transferable by any employer to his successor or anyone else except in accordance with such regulations as the commission may prescribe.

(5) All remuneration for work paid to an employee during any calendar year in the form of a bonus or lump-sum payment shall, for

rating purposes be treated in accordance with regulations of the commission.

If wages are paid bi-weekly, the total amount of wages paid in excess of six bi-weekly payments in any calendar quarter, may, for rate purposes, be apportioned by the commission equally among the four calendar quarters of the calendar year in which such wages were paid.

(d) If not later than three years after the date on which any contributions or interest or penalty thereon were paid, an employer who has paid such contributions or interest or penalty thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contributions or interest or penalty or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commission shall refund said amount, without interest. Refunds of contributions shall be made from the clearing account or the benefit account in the fund, and refunds of interest and penalty shall be made from the special administrative expense fund or from the interest and penalty monies in the clearing account of the fund. For like cause and within the same period, an adjustment or refund may be made on the commission's own initiative. Decisions with respect to such applications for refund shall be deemed final unless the employing unit shall, within ten days after the mailing or personal delivery of notices of such decision, apply to the commission for a review of such decision as provided in Section 35-4-10.

(e) All contributions paid by an employer under this act shall be deductible in arriving at the taxable income of such employer under the provisions of Chapters 13 and 14, Title 59, Utah Code Annotated 1953, as amended, to the same extent as taxes are deductible during any taxable year by any such employer.

(f) The commission, whenever it deems it necessary to insure compliance with the provisions of this act, may require any employer, subject to the contribution imposed hereunder to deposit with it such bond or security as the commission shall determine. Said bond or security may be sold by the commission at public sale if it becomes necessary so to do in order to recover any tax, interest, or penalty due. Notice of such sale may be served upon the employer who deposited such securities personally or by mail; if by mail, notice sent to the last known address as the same appears in the record of the commission shall be sufficient for purposes of this requirement. Upon such sale the surplus, if any, above the amounts due, shall be returned to the employer who deposited the security.

(g) (1) If an employer fails to comply with Section 35-4-7 (f) the district court of the county in which the employer resides or in which he employs workmen shall, upon the commencement of a suit by the commission for that purpose, enjoin the employer from further employing workmen in this state or continuing in business therein until the employer has complied with said Section 35-4-7 (f).



(2) Upon filing of a suit for such purpose by the commission, the court shall set a day for hearing and shall cause notice thereof to be served upon the employer. The hearing shall be not less than five nor more than fifteen days from the service of the notice.

**35-4-22. Definitions.**

(a) "Insured work" means employment for employers.

(b) The term "base period" shall mean the four completed calendar quarters next preceding the first day of the individual's benefit year.

(c) "Benefits" means the money payments payable to an individual as provided in this act with respect to his unemployment.

(d) (1) The term "benefit year" means the fifty-two consecutive week period beginning with the first week with respect to which an individual files for benefits and is found to have an insured status.

(2) The term "insured status" means that an individual has, during his base period, performed services and earned wages in employment sufficient to qualify for benefits pursuant to the provisions of Sections 35-4-3 and 35-4-4.

(e) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof, as the Commission may by regulation prescribe.

(f) "Commission" means the industrial commission of Utah.

(g) "Contribution" means the money payments required by this act to be made into the state unemployment compensation fund by any employing unit on account of having individuals in its employ.

(h) "Employing unit" means any individual or type of organization including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1935, had one or more individuals performing services for it within this state.

(1) All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be performing services for a single employing unit for all the purposes of this act.

(2) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged by such employing unit for all the purposes of this act whether such individual was hired or paid directly by such employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit which paid wages during a calendar quarter for employment amounting to \$140 or more and any employing unit subject to the Federal Unemployment Tax Act.

(2) Any employing unit which, having become an employer under paragraph (1), has not, under Section 35-4-8, ceased to be an employer subject to this act; or,

(3) For the effective period of its election pursuant to Section

35-4-8 (c) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" means any service performed prior to January 1, 1941, which was employment as defined in the Utah unemployment compensation law prior to the effective date of this act, and subject to the other provisions of this subsection, service performed after December 31, 1940, including service in interstate commerce, and service as an officer of a corporation performed for wages or under any contract of hire written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service performed within or both within and without this state if—

(A) the service is localized in this state; or

(B) the service is not localized in any state but some of the service is performed in this state and (I) the individual's base of operations, or if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (II) the individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

(3) (A) Services covered by an election pursuant to Section 35-4-8 (c), and

(B) Services covered by an arrangement pursuant to Section 35-4-21 between the commission and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the commission has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the commission that—

(A) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of hire and in fact; and

(B) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) such individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service.

(6) Provided that such services are also exempted under the Federal Unemployment Tax Act as amended the term "employment" shall not include:

(A) Service performed in the employ of a state, or a political subdivision thereof;

(B) Service performed in the employ of the United States government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this act, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided, that if this state shall not be certified for any year by the Social Security Board under Section 1603 of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the same period as is provided in Section 35-4-7 (d) of this act with respect to contributions erroneously collected;

(C) Service performed after June 30, 1939, as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), and service performed after June 30, 1939, for an employer as defined in said act except that if the commission shall determine that any employing unit which is principally engaged in activities not included in such definitions constitutes such an employer only to the extent of an identifiable and separable portion of its activities, this exemption shall apply only to services performed for such identifiable and separable portion of its activities;

(D) Agricultural Labor (as defined in paragraph (8) of this subsection);

(E) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(F) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(G) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(H) Service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purpose or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(I) Casual labor not in the course of the employing unit's trade or business;

(J) Service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 501 of the Federal Internal Revenue Code, if—

(1) The remuneration for such service is less than \$50 or

(2) Such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic-service in connection with any such society, order, or association, or

(3) Such service is performed in the employ of any agricultural or horticultural organization.

(K) Service performed in the employ of a foreign government (including service as a consular or other officer or other employee or a non-diplomatic representative);

(L) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(1) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(2) If the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government with respect to whose instrumentality, exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(M) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(N) Service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(O) Services performed by an individual as a golf caddy;

(P) Service covered by an arrangement between the commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state or under such federal law:

(Q) Service performed by lessees engaged in metal mining under lease agreements, unless the individual lease agreement, or the practice in actual operation under such agreement, is such as would constitute the lessees employees of the lessor at common law;

(R) Service performed by an individual for a person as a licensed real estate agent or salesman if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(7) "Included and excluded service." If the services performed during one-half or more of the pay period by an individual for the person employing him constitute employment all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period

shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him.

(8) "Agricultural labor." The term "agricultural labor" includes all services performed—

(A) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15 (g) of the Federal Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(D) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations, or, in the case of fruits or vegetables as an incident to the preparation of such fruits and vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(k) "Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

(l) "Fund" means the unemployment compensation funds established by this act.

(m) "Unemployment." (1) An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such

week are less than his weekly benefit amount. The commission shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedure as to total unemployment, part total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the commission deems necessary.

(2) The commission in its discretion may by regulation prescribe, in case of individuals on a regular attachment basis, the existence of unemployment for periods longer than a week, provided, that (i) it is a period of less than full-time work; (ii) insofar as possible the loss of wages required as a condition of being deemed "unemployed" in such periods shall be such as to allow comparable benefits, for comparable loss in wages, to those individuals working less than full-time in each week as would be payable on a weekly claim period basis to those individuals working full-time and not at all in alternate weeks; and (iii) unemployment shall in no case be measured on a basis of a longer than half-month period.

(n) "State" includes Hawaii and the District of Columbia.

(o) "Employment Security Administration Fund" means the Employment Security Administration Fund established by Section 35-4-14, and from which administrative expenses under this act shall be paid.

(p) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from person other than his employing unit shall be treated as wages received from his employing unit. The reasonable cash value of remuneration in any medium other than cash and the reasonable amount of gratuities shall be estimated and determined in accordance with rules and prescribed by the Commission; provided, that the term "wages" shall not include:

(1) For the purpose of Section 35-4-7, that part of the remuneration which after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment subject to this act during any calendar year prior to calendar year 1964 and that part of the remuneration which, after remuneration equal to \$4,200 has been paid to an individual by an employer with respect to employment during calendar year 1964 and any calendar year thereafter, is paid to such individual by such employer during such calendar year, provided, however, that for the purposes of this subsection remuneration over \$4,200 shall be deemed to be wages subject to contribution to the same extent that such remuneration is defined as wages by the Federal Unemployment Tax Act as amended.

If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or

business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then for the purpose of determining whether the successor employer has paid remuneration with respect to employment equal to the applicable taxable wages as defined by this subsection, to such individual during such calendar year, any remuneration with respect to employment paid to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer.

(2) The amount of any payment with respect to services performed after December 31, 1940, to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals, (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident, disability, or (C) medical and hospitalization expenses in connection with sickness or accidental disability, or (D) death, provided the individual in its employ (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his services with such employing unit;

(3) The payment of an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under Section 3101 of the Federal Internal Revenue Code with respect to services performed after December 31, 1940; or

(4) Dismissal payments after December 31, 1940, which the employing unit is not legally required to make.

(q) "Week" means such period or periods of seven consecutive calendar days as the Commission may by regulation prescribe.

(r) Unless services would constitute employment at common law, the term "employment" shall not include services as an outside salesman paid solely by way of commission, and such services must have been performed outside of all places of business of the enterprises for which such services are performed.

#### **35-4-26. Construction of Act.**

Nothing in this act shall be so construed as to change rate computations for the contribution years prior to January 1, 1964.

#### **Section 2. Effective Date.**

This act shall take effect July 7, 1963.

Approved February 27, 1963.

**CHAPTER 53**

H. B. No. 89

(Passed February 28, 1963. In Effect May 14, 1963)

**DEFINITION OF APPRENTICE**

**An Act Amending Section 35-8-5 Utah Code Annotated 1953, as Enacted by Chapter 58, Laws of Utah 1959, and as Amended by Chapter 70, Laws of Utah 1961, Relating to the Definition of an Apprentice.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 35-8-5, Utah Code Annotated 1953, as enacted by Chapter 58, Laws of Utah 1959, and as amended by Chapter 70, Laws of Utah 1961, is amended to read:

**35-8-5. Apprentice Defined.**

The term "apprentice" as used herein and in Title 34 means a person at least fifteen years of age who has entered into a written agreement approved by the Utah Apprenticeship Council with an employer or his agent, an association of employers, an organization of employees, or a joint committee representing employers and employees which apprenticeship agreement provides for not less than four thousand hours of reasonably continuous employment for such person, and for his participation in an approved schedule of on-the-job work experience through employment for the number of hours per year of related supplemental instruction as may be set as a standard by the Council.

Approved March 1, 1963.

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**LEGISLATURE****CHAPTER 54**

S. B. No. 63

(Passed March 8, 1963. In effect May 14, 1963)

**REAPPORTIONMENT**

**An Act Amending Sections 36-1-1, 36-1-2, Utah Code Annotated 1953, as Amended by Chapter 61, Laws of Utah 1955, 36-1-4, Utah Code Annotated 1953, as Amended by Chapter 60, Laws of Utah 1953, as Amended by Chapter 61, Laws of Utah 1955, Relating to the Representation in the Legislature of the State of Utah; Providing for a Reapportionment of the Legislature; Creating New Senatorial Districts; Providing for the Election of New Senators; Designating Senatorial and Representative Districts of the State of Utah and Numbering Such Districts; and Providing for the Appointment of Committees to Form Representative Districts in Counties Having More Than One Representative.**

*Be it enacted by the Legislature of the State of Utah:*



### Section 1. Sections Amended.

Sections 36-1-1, 36-1-2, Utah Code Annotated 1953, as amended by Chapter 61, Laws of Utah 1955, 36-1-4, Utah Code Annotated 1953, as amended by Chapter 60, Laws of Utah 1953, Chapter 61, Laws of Utah 1955, are amended to read:

#### 36-1-1. Representation in Senate.

Representation in the senate of the state shall be on a basis of one senator for the first twenty thousand inhabitants, or major fraction thereof, and one additional senator for each additional sixty-one thousand inhabitants, or major fraction thereof, residing within the senatorial district. The number, boundaries, and senatorial representation of such districts shall be as follows:

- First District: Box Elder County—one senator
- Second District: Cache County—one senator
- Third District: Rich, Morgan, and Summit Counties—one senator
- Fourth District: Weber County—two senators
- Fifth District: Duchesne and Wasatch Counties—one senator
- Sixth District: Salt Lake County—seven senators
- Seventh District: Utah County—two senators
- Eighth District: Beaver and Millard Counties—one senator
- Ninth District: Sanpete County—one senator
- Tenth District: Emery, Wayne, Piute, Garfield, and Kane Counties—one senator
- Eleventh District: Iron County—one senator
- Twelfth District: Grand and San Juan Counties—one senator
- Thirteenth District: Juab and Tooele Counties—one senator
- Fourteenth District: Carbon County—one senator
- Fifteenth District: Davis County—two senators
- Sixteenth District: Uintah and Daggett Counties—one senator
- Seventeenth District: Sevier County—one senator
- Eighteenth District: Washington County—one senator

provided, that senators elected in the general elections of 1962 and 1964 shall remain in office and represent the senatorial district within which they reside until the expiration of their respective terms of office.

#### 36-1-2. Representation in the House.

Representation in the house of representatives of this state shall be on the basis of one representative to each sixteen (16,000) inhabitants, or major fraction thereof, residing within the representative district; provided, that each county shall be entitled to at least one representative. Whenever a new county shall be formed, such new county shall be entitled to one representative, if its organization shall have been completed at least one hundred twenty days prior to the general election at which representatives are elected. Until otherwise provided by law, the number, boundaries, and representation of the several representative districts shall be as follows:

- First District: Box Elder County—two representatives
- Second District: Cache County—two representatives
- Third District: Rich County—one representative

Fourth District: Weber County—seven representatives  
Fifth District: Morgan County—one representative  
Sixth District: Davis County—four representatives  
Seventh District: Tooele County—one representative  
Eighth District: Salt Lake County—twenty-four representatives  
Ninth District: Summit County—one representative  
Tenth District: Wasatch County—one representative  
Eleventh District: Utah County—seven representatives  
Twelfth District: Uintah County—one representative  
Thirteenth District: Juab County—one representative  
Fourteenth District: Sanpete County—one representative  
Fifteenth District: Carbon County—one representative  
Sixteenth District: Emery County—one representative  
Seventeenth District: Grand County—one representative  
Eighteenth District: Sevier County—one representative  
Nineteenth District: Millard County—one representative  
Twentieth District: Beaver County—one representative  
Twenty-first District: Piute County—one representative  
Twenty-second District: Garfield County—one representative  
Twenty-third District: Garfield County—one representative  
Twenty-fourth District: Iron County—one representative  
Twenty-fifth District: Washington County—one representative  
Twenty-sixth District: Kane County—one representative  
Twenty-seventh District: San Juan County—one representative  
Twenty-eighth District: Duchesne County—one representative  
Twenty-ninth District: Daggett County—one representative

**36-1-4. Redistricting Counties Having More Than One Representative or Senator — Committee—Members—Appointment—Qualifications—Duties.**

On or before July 1, 1963, a committee consisting of five voters from each county of the state, having more than one member in the state senate and/or more than one member in the house of representatives, shall divide the county into as many senatorial districts as it is entitled to senators, as prescribed in section 36-1-1, Utah Code Annotated 1953, as amended by this act, and shall divide the county into as many representative districts as it is entitled to representatives, as prescribed in section 36-1-2, Utah Code Annotated 1953, as amended by this act, and number the same. The committee designated to redistrict said county shall be chosen as follows: Two members appointed by the county Democratic party executive committee; two members appointed by the county Republican party executive committee and one member elected by a majority vote of the other four members of this committee.

If at the end of ten days after their appointment the four committee members shall not have been able to agree upon the fifth member, the chairman of the board of county commissioners shall immediately call the four committee members into a meeting where the two Republican members shall select a person and the two Democratic members shall select a person and the chairman of the board shall, by appropriate drawing of lots, determine which of the two persons thus selected shall

be the fifth member of the committee. In the event that appointment of committee members required to be made by the political parties is not made by July 1, 1963, then the chairman of the county commission shall appoint two members from the Democratic Party and two members from the Republican Party to serve as members of the committee, provided, however, that if either party shall have appointed committee members the county commission shall appoint only two members from the political party which shall not have made the appointment. In dividing the county into districts, the committee shall take into consideration the population and physical features of the county and shall make the districts as near equal in population as may be most practicable; provided, that representative districts shall not be divided in the formation of senatorial districts. When such division is completed by the committee, a copy thereof shall be furnished to the county commission of said county, who shall then prepare and certify a map thereof, showing the various districts and shall be filed with the secretary of state by January 1, 1964.

The committee members appointed as provided in this act shall be voting citizens and no elected or appointed officer or public employee of the state, city, county, school districts, or other political subdivisions shall be appointed to serve on the committee. It is the intention of this act to provide for a citizen's committee in each county containing more than the state senator and/or more than one member of the house of representatives which shall consist of citizens who are not employed in any branch of government service or elected to any governmental office.

When the committee members have been appointed by the county Democratic and Republican party executive committees, the county clerks in the respective counties shall be notified of such appointments. Appointments shall be made within thirty days after the effective date of this act and the county clerk shall immediately thereafter call a meeting of the appointed members of the committee, at which time the fifth member shall be elected by the four appointed members. Within fifteen days after the election of the fifth member of the committee, the county clerk shall call another meeting of the committee for the purpose of electing a chairman for the discharge of committee duties.

The committee in each county having more than one senator and/or house member shall be provided with any information requested from the county clerk's office and the committee shall have access to any public records or documents necessary in determining populations, registered voters, votes cast at previous elections and other pertinent data for the respective counties.

The committee shall use the last available official federal and/or state census to determine the population of counties, cities, or districts within counties.

Approved March 11, 1963.

**CHAPTER 55**

S. B. No. 24

(Passed February 11, 1963. In effect May 14, 1963)

**PREFILING OF BILLS****An Act to Provide for the Pre-filing of Bills With the Utah Legislative Council.***Be it enacted by the Legislature of the State of Utah:***Section 1. Pre-filing of Bills.**

After November 15th preceding the convening of the legislature, bills may be submitted to the Utah Legislative Council by a legislator or a member-elect of the legislature for introduction in the legislature. Such bills must be signed by one or more legislators or members-elect who sponsor the bill and must be filed prior to the first Monday next preceding the convening of the legislature.

The Legislative Council shall provide for the review of such bills and their preparation in conformity with requirements of the constitution, law and existing rules of the legislature. The Council shall affix a number to the bills as submitted for filing with the proper house designation. Upon convening of the legislature the bills as filed shall be transmitted to the respective houses of the legislature for introduction according to the numbers assigned by the Council.

Approved February 11, 1963.

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**LIBRARIES****CHAPTER 56**

S. B. No. 36

(Passed March 13, 1963. In effect May 14, 1963)

**MINIMUM LEVY—LIBRARIES**

**An Act Relating to City Public Libraries; Providing for Their Establishment and Maintenance Through Maximum and Minimum Levies of Taxes to Provide for a Library Fund; Providing for Appointment of a Board of Directors by the Governing Body; Prescribing Their Appointment, Powers, and Duties; Providing for the Governing of the Libraries and Providing for a Librarian and Assistants; Authorizing Donations to Libraries and Empowering Various Boards to Cooperate in Providing Library Services; Providing for Consolidation; and Repealing Section 37-2-1, Utah Code Annotated 1953, as Amended by Chapter 62, Laws of Utah 1955, and Chapter 59, Laws of Utah 1959, and Sections 37-2-2, 37-2-3, 37-2-4, 37-2-5, 37-2-6, 37-2-7, 37-2-8, 37-2-9, and 37-2-10, Utah Code Annotated 1953, and Enacting a New Chapter 2, Title 37, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:***Section 1. Sections Amended as Enacted.**

Sections 37-2-1, 37-2-2, 37-2-3, 37-2-4, 37-2-5, 37-2-6, 37-2-7, 37-2-8,

37-2-9, and 37-2-10, Utah Code Annotated 1953, are enacted to read:

**37-2-1. City Public Libraries — Establishment — Maintenance — Tax Levies—Bonds—Library Fund.**

The governing body of cities may establish and maintain public libraries. For this purpose, cities may levy annually a tax not to exceed three mills on each dollar of assessed valuation on all taxable property within the city. Said tax shall be in addition to all taxes levied by said cities, and shall not be limited by levy limitation imposed on said cities by law. However, if bonds are hereafter issued for purchasing a site, constructing a building, or furnishing the same, then taxes sufficient for the payment of such bonds and the interest thereon may be levied. Such taxes shall be levied and collected in the same manner as other general taxes of the city, and shall constitute a fund to be known as the library fund.

**37-2-2. Appointment of Directors.**

When the governing body in any city decides to establish and maintain a public library under the provisions of this act, it shall appoint a library board of directors, chosen from the citizens at large with reference to their fitness for such office. The board of directors shall consist of not less than five members and not more than nine members. Not more than one member of the governing body shall be, at any one time, a member of such board. Directors shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

**37-2-3. Terms of Directors.**

Directors shall be appointed for three year terms, or until their successors are appointed. Initially, appointments shall be made for one, two and three year terms. Annually thereafter, the governing body shall, before the first day of July of each year, appoint for three year terms directors to take the place of the retiring directors. Directors shall serve not more than two full terms in succession. Following such appointments, the directors shall meet and elect a chairman and such other officers, as they deem necessary, for one year terms. The governing body may remove any director for misconduct or neglect of duty. Vacancies in the board of directors, occasioned by removals, resignations, or otherwise, shall be filled for the unexpired term in the same manner as original appointments.

**37-2-4. Board of Directors With Approval of Governing Board Control Expenditures.**

The library board of directors may with the approval of the governing body have control of the expenditure of the library fund, of construction or lease of library buildings, and of the operation and care of the library. All tax monies received for such library shall be deposited in the city treasury to the credit of the library fund, and shall not be used for any purpose except that of the city library. Said fund shall be drawn upon by the authorized officers of the city, upon presentation of the properly authenticated vouchers of the library board. All monies collected by the library shall be deposited to the

credit of the library fund. The board may purchase or lease grounds, and lease or erect buildings for the use of the library. The board shall be responsible for the maintenance and care of the library and shall establish policies for its operation, and, in general, carry out the spirit and intent of the provisions of this chapter.

**37-2-5. Board to Adopt Rules and Regulations.**

The library board of directors shall make and adopt rules and regulations, not inconsistent with law, for the governing of the library. Every library established under the provisions of this chapter shall be free to the use of the inhabitants of the city where located, subject to the rules and regulations adopted by the board. The board may exclude from the use of the library any and all persons who shall willfully violate such rules. The board may extend the privileges and use of the library to persons residing outside of said city upon such terms and conditions as it may prescribe by its regulations.

**37-2-6. Make Annual Report.**

The library board of directors shall make an annual report to the governing body of the city on the condition and operation of the library, including a financial statement. The directors shall also provide for the keeping of such records as shall be required by the Utah state library commission in its request for an annual report from the public libraries, and shall submit such annual report to the commission.

**37-2-7. Appoint Librarian.**

The library board of directors shall appoint a competent person to librarian to have immediate charge of the library with such duties and compensation for his services as it shall fix and determine. The librarian shall act as the executive officer for the library board. The board shall appoint, upon the recommendation of the librarian, other personnel as needed.

**37-2-8. Donations and Gifts Accepted.**

Any person desiring to make donations of money, personal property, or real estate for the benefit of such library shall have the right to vest the title to the money, personal property or real estate so donated, in the board of directors thereof, to be held and controlled by such board, when accepted, according to the terms of the deed, gift, devise or bequest of such property; and as to such property the board shall be held and considered to be trustees.

**37-2-9. Cooperation With Other Agencies.**

Boards of directors of city libraries, boards of directors of county libraries, boards of education, governing boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to cooperate, merge, or consolidate in providing library service.

**37-2-10. Consolidation.**

When a city library consolidates with a county library, the city library board of directors shall convey all assets and trust funds to the county

library board of directors and the city library shall cease operation.

**Section 2. Sections Amended and Repealed.**

Section 37-2-1, Utah Code Annotated 1953, as amended by Chapter 62, Laws of Utah 1955, and Chapter 59, Laws of Utah 1959 as amended, Sections 37-2-2, 37-2-3, 37-2-4, 37-2-5, 37-2-6, 37-2-7, 37-2-8, 37-2-9, 37-2-10, 37-2-11 and 37-1-12, Utah Code Annotated 1953, are hereby repealed.

Approved March 18, 1963.

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**CHAPTER 57**

S. B. No. 33

(Passed March 12, 1963. In effect May 14, 1963)

**COUNTY LIBRARIES**

**An Act Relating to County Public Libraries; Providing for Their Establishment and Maintenance Through Taxation; Providing for a Library Fund; Providing for Appointment of Directors by County Commissioners; Providing for the Governing of the Libraries and Providing for a Librarian and Assistants; Authorizing Donations to Libraries and Empowering Various Boards to Cooperate in Providing Library Services; and Repealing Sections 37-3-1, 37-3-2, 37-3-3, 37-3-4, 37-3-5, 37-3-6 and 37-3-8, 37-3-9, Utah Code Annotated 1953, and Enacting a New Chapter 3, Title 37, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Enacted.**

Sections 37-3-1, 37-3-2, 37-3-3, 37-3-4, 37-3-5, 37-3-6, 37-3-7, 37-3-8, 37-3-9, and 37-3-10, Utah Code Annotated 1953, are enacted to read:

**37-3-1. Tax for Libraries—Creation of Fund.**

County commissioners may establish and maintain a public library. For this purpose, counties may levy annually a tax not to exceed three mills on each dollar of assessed valuation on all taxable property in the county, outside of cities which maintain their own city libraries as authorized by Chapter 2 Title 37, Utah Code Annotated 1953, as amended. Said tax shall be in addition to all taxes levied by counties and shall not be limited by levy limitation imposed on counties by law. However, if bonds are hereafter issued for purchasing a site, constructing a building, or furnishing the same, then taxes sufficient for the payment of such bonds and the interest thereon may be levied. Such taxes shall be levied and collected in the same manner as other general taxes of the county and shall constitute a fund to be known as the county library fund.

**37-3-2. Appointment of Library Board.**

Upon the establishment of a county public library under the provisions of this act, the county commissioners shall appoint a library board of five directors chosen from the citizens of the county with reference to their fitness for such office. One member of the county com-

mission shall be a member of such board. Directors shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

### **37-3-3. Terms of Directors.**

Directors shall be appointed for four year terms, or until their successors are appointed. Initially, appointments shall be made for one, two, three, and four year terms, and one county commissioner for the term of his elected office. Annually thereafter, the county commissioners shall, before the first day of July of each year, appoint, for a four year term, one director to take the place of the retiring director. Directors shall serve not more than two full terms in succession. Following such appointments, the directors shall meet and elect a chairman and such other officers, as they deem necessary, for one year terms. The county commissioners may remove any director for misconduct or neglect of duty. Vacancies in the board of directors, occasioned by removals, resignations, or otherwise, shall be filled for the unexpired terms in the same manner as original appointments.

### **37-3-4. Monies Deposited in Library Fund.**

The library board of directors may with the approval of the Board of County Commissioners have control of the expenditure of the library fund, of construction or lease of library buildings, and of the operation and care of the library. All tax monies received for such library shall be deposited in the county treasury to the credit of the library fund, and shall not be used for any purpose except that of the county library. Said funds shall be drawn upon by the authorized officers of the county upon presentation of the properly authenticated vouchers of the library board. All monies collected by the library shall be deposited to the credit of the library fund. The board may purchase or lease land, and lease or erect buildings, for the use of the library. The board shall be responsible for the maintenance and care of the library and shall establish policies for its operation, and, in general, carry out the spirit and intent of the provisions of this chapter.

### **37-3-5. County Commission to Fix Tax Levy.**

The library board of directors shall furnish to the county commission, in writing, and prior to the time required by law to levy county taxes, an estimate of the amount of monies necessary to establish, equip and maintain the library, and to provide library services during the next ensuing fiscal year and shall certify the same; the board of county commissioners may thereafter, at the time and in the manner of levying other taxes, impose such levy; provided, that such levy shall not exceed in any one year, three mills on each dollar of all of the taxable property of the county.

### **37-3-6. Adopt Rules and Regulations.**

The library board of directors shall make and adopt rules and regulations, not inconsistent with law, for the governing of the library. Every library established under the provisions of this chapter shall be free to the use of the inhabitants of the area taxed for the support of said library, subject to the rules and regulations adopted by the board.



The board may exclude from the use of the library any and all persons who shall willfully violate such rules. The board may extend the privileges and use of the library to persons residing outside of said area upon such terms and conditions as it may prescribe by its regulations.

**37-3-7. Make Annual Report.**

The library board of directors shall make an annual report to the county commission on the condition and operation of the library, including a financial statement. The directors shall also provide for the keeping of such records as shall be required by the Utah State Library Commission in its request for an annual report from the public libraries, and shall submit such an annual report to the Utah State Library Commission.

**37-3-8. Appoint Librarian.**

The library board of directors shall appoint a competent person as librarian to have immediate charge of the library with such duties and compensation for his services as it shall fix and determine. The librarian shall act as the executive officer for the library board. The board shall appoint, upon the recommendation of the librarian, other personnel as needed.

**37-3-9. May Accept Gifts.**

Any person desiring to make donations of money, personal property or real estate for the benefit of such library shall have the right to vest the title to the money, personal property or real estate so donated, in the board of directors thereof, to be held and controlled by such board, when accepted, according to the terms of the deed, gift, devise or bequest of such property; and as to such property the board shall be held and considered to be trustees.

**37-3-10. Cooperation Between Agencies.**

Boards of directors of city libraries, boards of directors of county libraries, boards of education, governing boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to cooperate, merge, or consolidate in providing library services.

**Section 2. Sections Repealed.**

Sections 37-3-1, 37-3-2, 37-3-3, 37-3-4, 37-3-5, 37-3-6, 37-3-7, 37-3-8, and 37-3-9, Utah Code Annotated 1953, are hereby repealed.

Approved March 14, 1963.

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**CHAPTER 58**

S. B. No. 32

(Passed March 9, 1963. In effect May 14, 1963)

**STATE LIBRARY**

**An Act Amending Section 37-4-3, Utah Code Annotated 1953, as Enacted by Chapter 68, Laws of Utah 1957, Relating to Libraries; Providing**

**That the Members of the State Library Commission May Be Granted Pay Per Diem as Authorized by Law.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 37-4-3. Section Amended.**

Section 37-4-3, Utah Code Annotated 1953, as enacted by Chapter 68, Laws of Utah 1957, is amended to read:

**37-4-3. State Library Commission—Members—Appointment—Term—Secretary of State Ex-officio Member—Compensation.**

There is established a state library commission composed of nine members appointed by the governor, with the advise and consent of the senate. The appointment shall be for six year overlapping terms. Initially three members shall be appointed for two year terms, three members for four year terms, and three members for six year terms. One shall be appointed on recommendation from each of the following agencies: State department of public instruction, the law library board, the legislative council, and the state historical society board. Of the five remaining members, at least two shall be appointed from rural areas.

The secretary of state shall be a member ex-officio of the state library commission. The commission shall select its own chairman, who shall serve for a period of two years. The state director of libraries shall act as secretary to the commission.

The members of the state library commission shall serve without pay, unless a per diem allowance is now or hereafter authorized by law, but their actual and necessary expenses incurred in the performance of their official duties shall be paid from state library funds.

Approved March 11, 1963.

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**CHAPTER 59**

S. B. No. 34

(Passed March 12, 1963. In effect May 14, 1963)

**STATE LIBRARY COMMISSION**

**An Act Amending Section 37-4-4, Utah Code Annotated 1953, as Enacted by Chapter 68, Laws of Utah 1957, Relating to the State Library; Providing for Cooperation and Exchanges of Publications With Other Libraries of This State, Other States, This Nation and Other Nations; Providing Authority to the Library Commission to Develop Standards for Public Libraries and Certification of Public Librarians.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 37-4-4. Section Amended.**

Section 37-4-4, Utah Code Annotated 1953, as enacted by Chapter 68, Laws of Utah 1957, is amended to read:

**37-4-4. Powers, Duties of State Library Commission.**

The state library commission shall have the following powers and du-

ties pertaining to the operation of a state library and state library services:

(1) Shall promote, develop and organize a state library and make provisions for its housing;

(2) Shall promote and develop library services, throughout the state in cooperation with any and all other state or municipal libraries, schools or other agencies wherever practical;

(3) Shall promote the establishment of district, regional or multi-county libraries as conditions within particular areas of the state may require;

(4) Shall have supervision of the books and materials of the state library and shall require careful and complete records of the condition and affairs of the state library to be kept;

(5) Shall on the recommendation of the state director of libraries appoint and employ all professional, clerical or other help needed in the state library system, and shall determine standards for qualification and compensation;

(6) Shall make rules and regulations and establish standards for the administration of the Utah state library, and for the control, distribution and lending of books and materials to those libraries, institutions, groups, or individuals entitled to the same through the provisions of this act;

(7) Shall serve as the agency of the state for the administration of any state or federal funds which may now or in the future be appropriated to further library development within the state, and shall establish regulations under which such grants shall be made to individual libraries; except that this provision shall not apply to appropriations made directly to any other agency or institution;

(8) Shall aid and provide general advisory assistance in the development of state-wide school library service and encourage contractual and cooperative relations between school and public libraries;

(9) Shall give assistance, advice and counsel to all tax supported libraries of any type within the state and to all communities or persons proposing to establish them and may conduct courses and institutes on the approved methods of operation, selection of books, or other activities necessary to the proper administration of a library;

(10) Shall furnish or contract for the furnishing of library or information service to state officials, state departments or any groups that, in the opinion of the state director of libraries, warrants the furnishing of such services, particularly by and through the facilities of traveling libraries, to those parts of the state otherwise inadequately supplied by libraries; and where sufficient need exists and if the state director of libraries otherwise deems it advisable, may establish and maintain special departments in the state library to provide services for professional, occupational, and other groups.

(11) Shall distribute one copy of each official publication of the state to each public school library, each college and university library, and each public library within the state, and to the library of Congress and, in exchange for similar publications from other states and nations, to such libraries and public agencies outside the state as it shall deem to be in the public interest. It may distribute to such libraries and

agencies a reasonable number of additional copies upon the basis of demonstrated need, as determined by the state library. The several officers and agencies of the state shall furnish and send to the state library sufficient copies of all their publications specified by the state library, and issued at state expense, except reports of the supreme court, to enable the state library to comply with the requirements hereof. The state library commission may omit from such distribution such official publications as it shall find and determine are of such limited public interest that such distribution will serve no reasonable public purpose.

(12) Shall require that information and statistics necessary to the work of the state library be collected, and that findings and reports thereon be published;

(13) Shall make a biennial report concerning the activities of the state library to the governor, as he may require.

(14) Shall develop standards for public libraries and rules and regulations for the certification of public librarians.

Approved March 16, 1963.

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## CHAPTER 60

S. B. No. 31

(Passed March 9, 1963. In effect May 14, 1963)

### REGIONAL LIBRARIES

**An Act Repealing Section 37-4-11, Utah Code Annotated 1953, as Enacted by Chapter 68, Laws of Utah 1957, Relating to Establishment of Regional Libraries.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Repealed.**

Section 37-4-11, Utah Code Annotated 1953, as enacted by Chapter 68, Laws of Utah 1959, is hereby repealed.

Approved March 14, 1963.

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## NATIONAL GUARD

### CHAPTER 61

H. B. No. 143

(Passed March 14, 1963. In effect May 14, 1963)

### MILITIA AND ARMORIES

**An Act Amending Sections 39-1-1, 39-1-2, 39-1-4, 39-1-13, 39-1-24, 39-1-25, 39-1-28, 39-1-30, 39-1-31, 39-1-32, 39-1-33, 39-1-34, 39-1-40, 39-1-52 and 39-1-53, Utah Code Annotated 1953, Section 39-1-18, Utah Code Annotated 1953, as Amended by Chapter 63, Laws of Utah 1953, Chapter 64, Laws of Utah 1955, Chapter 69, Laws of Utah 1957, and Chapter 77, Laws of Utah 1961, Section 39-1-51, as amended by Chapter 63, Laws of Utah 1953, and Section 39-1-61, Utah Code Annotated 1953, as Enacted by Chapter 63, Laws of Utah 1953, Relating to the National Guard of the State of Utah; Providing for Military Structure of the**

**National Guard Consistent With That of the United States Military Services.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 39-1-1, Utah Code Annotated 1953, is amended to read:

**39-1-1. Militia—How Constituted—Persons Exempted.**

All able-bodied male citizens, and all able-bodied males of foreign birth who have declared their intention to become citizens, eighteen or over and less than forty-five years of age, who are residents of this state, shall constitute the militia, subject to the following exemptions:

- (1) Persons exempted by laws of the United States.
- (2) Persons exempted by the laws of this state.
- (3) All persons who have been honorably discharged from the army, air force, navy or volunteer forces of the United States.
- (4) Active members of any regularly organized fire or police department in any city or town, but no member of the active militia shall be relieved from duty therein because of his joining any volunteer fire company or department.
- (5) Judges and clerks of courts of record, state and county civil officers holding office by election, state officers appointed by the governor for a specified term of office, ministers of the gospel, practicing physicians, superintendents, officers and assistants of hospitals, prisons and jails, conductors, brakemen, flagmen, engineers and firemen of railways, and all other employees of railways actually employed in train service.

- (6) Idiots, lunatics and persons convicted of infamous crime.

All such exempted persons, except those enumerated in subdivisions (1) and (6), shall be liable to military duty in case of war, insurrection, invasion, tumult, riot or public disaster, or imminent danger thereof, or after they have voluntarily enlisted in the national guard of this state.

**Section 2. Section Amended.**

Section 39-1-2, Utah Code Annotated 1953, is amended to read:

**39-1-2. Divided Into National Guard and Unorganized Militia.**

The militia of this state shall be divided into two parts: the national guard and the unorganized militia. The national guard shall consist of a department for army and a department for air with a general officer at the head of each department and such units as may be allocated to the state. Its numerical strength, composition, distribution, organization, arms, uniforms, equipment, training and discipline shall be prescribed by the governor in conformity with the laws and regulations of the United States and the laws of this state. The unorganized militia shall consist of all members of the militia not members of the national guard.

**Section 3. Section Amended.**

Section 39-1-4, Utah Code Annotated 1953, is amended to read:

**39-1-4. Staff of Commander in chief.**

The staff of the commander in chief shall consist of the adjutant general, the assistant adjutant general for army and the assistant adjutant general for air and such other members as he shall choose from the officers of the national guard or active officers of the United States Army or United States Air Force detailed on duty with the militia of the state. The members of the staff shall serve as such without pay from the state.

**Section 4. Section Amended.**

Section 39-1-13, Utah Code Annotated 1953, is amended to read:

**39-1-13. Adjutant General as Disbursing and Property Officer.**

The adjutant general shall be disbursing and property officer for the state, expending state funds allocated to the national guard through the finance department according to established procedures.

**Section 5. Section Amended.**

Section 39-1-18, Utah Code Annotated 1953, as amended by Chapter 63, Laws of Utah 1953, Chapter 64, Laws of Utah 1955, Chapter 69, Laws of Utah 1957, and Chapter 77, Laws of Utah 1961, is amended to read:

**39-1-18. Assistant Adjutant General—Officer for Permanent Duty as Personnel Officer—Salary.**

There is hereby authorized an assistant adjutant general for the army and an assistant adjutant general for air. The adjutant general with the approval of the governor may detail the assistant adjutant general for army or the assistant adjutant general for air for permanent duty at his office. He shall be a federally recognized commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of the state of Utah or of the United States, at least three of which shall have been commissioned in the national guard of Utah and who shall have reached the grade of field officer. He shall hold office at the pleasure of the adjutant general. He shall devote all of his time during office hours of the military department to the duties of his office. The adjutant general, with the approval of the governor, may detail one officer of the Utah National Guard for permanent duty as the personnel officer. He shall be a federally recognized commissioned officer of the Utah National Guard with not less than three years military service in the armed forces of the state of Utah or of the United States, one of which shall have been commissioned in the national guard of Utah. He shall hold office at the pleasure of the adjutant general. The duties of the personnel officer shall be such duties as the adjutant general may direct, to include the normal duty of the staff G-1 and G-2. He shall function as a state recruiting officer and also as a state public relations officer and shall devote all of his time during the office hours of the military department to the duties of his office.

**Section 6. Section Amended.**

Section 39-1-24, Utah Code Annotated 1953, is amended to read:

**39-1-24. Assistant Adjutant General.**

The assistant adjutant general detailed for permanent duty shall serve in the office of the adjutant general, and aid him by performing such duties as the adjutant general may assign to him. In the absence or disability of the adjutant general he shall perform the duties of the adjutant general. The assistant adjutant general not detailed for permanent duty in the office of the adjutant general shall aid him by performing such duties as the adjutant general may assign him, and he shall serve in such position without pay from the state.

**Section 7. Section Amended.**

Section 39-1-25, Utah Code Annotated 1953, is amended to read:

**39-1-25. Disbursing and Property Officer of United States.**

The governor shall designate an officer of the national guard, subject to the approval of the department of the army or the department of the air force, as property and fiscal officer of the United States for Utah. Such officer shall have had actual service in the forces of the United States or the national guard, and have knowledge of army or air administration. Such officer shall receive and account for all funds and property belonging to the United States in the possession of the national guard, and shall make such returns and reports concerning the same as may be required by the national guard bureau. Such officer shall render, through the national guard bureau, such accounts of federal funds entrusted to him for disbursement as may be required by the treasury department. Before entering upon the performance of his duties as property and disbursing officer he shall be required to give good and substantial bond to the United States, the amount thereof to be determined by the national guard bureau, for the faithful performance of his duties, for the safekeeping and proper disbursing of the federal property and funds entrusted to his care.

**Section 8. Section Amended.**

Section 39-1-28, Utah Code Annotated 1953, is amended to read:

**39-1-28. Loss of Property—Liability.**

Whenever it shall have been finally determined in the manner provided by law or regulation by action of the departments of the army or the air force, that the loss, damage or destruction of federal property for which any officer shall be responsible or accountable shall have been occasioned by or through the failure of any officer to perform the duties required of him by law or regulation; or when it shall have been finally determined, in the case of state property, by the adjutant general that any state property for which any officer shall be accountable or responsible shall have been lost, damaged or destroyed by or through the failure of any officer to perform the duties required of him by law or regulation, such determination by the departments of the army or the air force or adjutant general, as the case may be, shall be prima facie evidence against such officer and his sureties of such failure, and the record of such determination, properly authenticated under the seal of the adjutant general, shall be admissible in evidence for the purpose of establish-

ing such failure and such determination in any action against any officer and/or his sureties.

**Section 9. Section Amended.**

Section 39-1-30, Utah Code Annotated 1953, is amended to read:

**39-1-30. Officers of National Guard—Commissions.**

All officers of the national guard shall be appointed by the governor, subject to the approval of the national guard bureau, or subject to such approval as shall be prescribed by the laws of the United States or rules or regulations thereof governing the national guard. No officer shall be commissioned unless he shall successfully pass such tests, both physical and mental, as shall be prescribed by the national guard bureau, nor shall any officer be commissioned unless he shall have taken the oath prescribed by the laws of the United States, shall be over twenty-one years of age, a citizen of the United States, and shall have been selected from one of the following classes: Officers or enlisted men of the national guard; officers on the reserve or unassigned list of the national guard; officers active or retired; or former officers of the United States army, air force, navy, marine corps or national guard; graduates from the service of the United States military, air and naval academies, or graduates of schools, colleges and universities where a course in military science, as prescribed by the national guard bureau, is taught under the supervision of an officer of the regular army or regular air force; and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein; provided, that officers appointed to staff corps or departments, or other staff positions, including officers of the pay, inspection, subsistence and medical departments, shall have had previous military experience, and shall hold their positions until they shall have reached the age of sixty-four years, unless separated therefrom prior to that time by reason of resignation, disability, or for other causes to be determined by a court-martial or other legally organized board convened for that purpose, and vacancies among said officers shall be filled by appointment as provided in this section.

**Section 10. Section Amended.**

Section 39-1-31, Utah Code Annotated 1953, is amended to read:

**39-1-31. Commission to Officers—Relative Rank.**

Commissions shall be issued under the seal of the adjutant general, signed by the governor and countersigned by the adjutant general. They may be vacated in such manner as is now or shall hereafter be provided by law in regard to commissions of the regular army or regular air force and the national guard of the United States. The relative rank of officers of the same grade shall be determined by length of service in that grade, whether continuous or not, and if the length of service of two or more officers is the same, their rank shall be determined by lot.

**Section 11. Section Amended.**

Section 39-1-32, Utah Code Annotated 1953, is amended to read:



**39-1-32. National Guard—Enlistment—Qualifications—Discharge.**

Any male between the ages of eighteen and forty-five years, who is a citizen of the United States or who has declared his intention to become a citizen, not prohibited by the laws of the state or of the United States, may be enlisted in the national guard, subject to such physical and other examinations as may be prescribed by the national guard bureau. All persons herein named who shall enlist in the national guard shall take and subscribe the oath provided by the laws of the United States, and upon so doing shall become members of the national guard for such period as may be prescribed by the laws of the United States, unless sooner discharged. Enlisted men may be discharged as provided by the laws of the United States and regulations of the national guard bureau.

**Section 12. Section Amended.**

Section 39-1-33, Utah Code Annotated 1953, is amended to read:

**39-1-33. Noncommissioned Officers.**

The appointment and reduction of noncommissioned officers shall be made in the same manner as in the regular army or the regular air force of the United States.

**Section 13. Section Amended.**

Section 39-1-34, Utah Code Annotated 1953, is amended to read:

**39-1-34. Excuse From Drill—Furloughs.**

Unless otherwise provided by the laws of the United States or the regulations of the national guard bureau, the commanding officer of any troop, battery, group, squadron, or other unit shall have power, for good and sufficient reason, to excuse members of his organization from attendance at drill; he shall also have power to grant furloughs and leaves of absence, by and with the consent of the adjutant general.

**Section 14. Section Amended.**

Section 39-1-40, Utah Code Annotated 1953, is amended to read:

**39-1-40. Military Offenses—Courts-Martial.**

All military offenses under the United States Uniform Code of Military Justice, and under the rules and regulations which may from time to time be made and published in accordance therewith, shall be, and they are hereby declared to be offenses against the military laws of this state, and offenders against the same shall be tried by courts-martial and punished as therein provided. Courts-martial shall be constituted as provided by laws of the United States or the military rules and regulations thereof, and of three kinds, namely: general courts-martial, special courts-martial, and summary courts-martial, and in addition there may be boards of inquiry and efficiency as herein provided. They shall be constituted like and have cognizance of the same subjects and possess the same powers as similar courts provided by the laws and regulations governing the United States National Guard not in the service of the United States. And the proceedings of courts-martial of the national guard shall

follow the form and modes of procedure prescribed for similar courts. All punishments and sentences adjudged, found or imposed by a court-martial, unless otherwise provided for in the sentence or punishment itself, shall be executed by the civil authorities the same as if the sentence or punishment had been imposed by a judge of civil court in a criminal case. A certified copy of the judgment rendered and sentence imposed by the court-martial certified to by the judge advocate or the president of the court-martial rendering judgment and imposing sentence shall be filed in the office of the proper civil authorities, and the same shall be docketed and filed in a special docket kept for that purpose. If the sentence imposed by the court-martial is a sentence involving a fine less than \$299 or less than six months' imprisonment in the county jail or both such fine and imprisonment, the certified copy of the judgment and sentence shall be filed in the city or justices' court within whose precinct or jurisdiction the court-martial was held. If the fine imposed is more than \$299, or the imprisonment more than six months in the county jail, or imprisonment for more than six months in any jail or penitentiary, the certified copy of the judgment and sentence shall be filed in the office of the clerk of the district court of the county in which the court-martial was held. In the case of any filing of certified copy of judgment and sentence the same shall be docketed as above specified and execution shall issue thereon the same as in a criminal judgment tried in the civil courts.

**Section 15. Section Amended.**

Section 39-1-51, Utah Code Annotated 1953, as amended by Chapter 63, Laws of Utah 1953, is amended to read :

**39-1-51. Pay of Militia.**

When called into the service of the state and not in the service of the United States, the members of the national guard shall receive the same pay and allowance as members of the regular army or regular air force of like rank and length of service. In addition to the above pay, officers and enlisted personnel shall receive one ration per day; provided, that this state shall make no payments to members of the national guard in the case of service for which the United States government makes payment.

**Section 16. Section Amended.**

Section 31-1-52, Utah Code Annotated 1953, is amended to read :

**39-1-52. Encampments.**

Encampments of the national guard shall be such as may be provided for by the national guard bureau under authority of Congress. The cost of maintenance, transportation and subsistence, and other expenses of such encampments and maneuvers, shall not be paid by the state, but as provided for by Congress.

**Section 17. Section Amended.**

Section 39-1-53, Utah Code Annotated 1953, is amended to read :

**39-1-53. Companies Not to Leave State.**

No military unit of the army or air national guard, unless called into the service of the United States, shall leave the state with arms and equipment without the consent of the commander in chief, and any person causing any unit to so leave the state is guilty of a misdemeanor.

**Section 18. Section Amended.**

Section 39-1-61, Utah Code Annotated 1953, as enacted by Chapter 63, Laws of Utah 1953, is amended to read:

**39-1-61. National Guard Advisory Board.**

There is hereby created a national guard advisory board consisting of the adjutant general, battalion and squadron and higher commanders. The purpose of the national guard advisory board is to make recommendations to the adjutant general as to the needs of the national guard. The board shall meet on call of the adjutant general from time to time as necessary but will meet as a minimum at least once each year. The adjutant general shall be authorized to draw upon military department funds to reimburse members of the board for reasonable expense, including travel incurred in the course of their duties.

Approved March 20, 1963.

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**CHAPTER 62**

S. B. No. 146

(Passed March 14, 1963. In effect May 14, 1963)

**ADJUTANT GENERAL SALARY—BOND**

**An Act Amending Section 39-1-21, Utah Code Annotated 1953, as Amended by Chapter 63, Laws of Utah 1953, Chapter 64, Laws of Utah 1955, Chapter 69, Laws of Utah 1957, and Chapter 77, Laws of Utah 1961, Relating to the Salary of the Adjutant General.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 39-1-21, Utah Code Annotated 1953, as amended by Chapter 63, Laws of Utah 1953, Chapter 64, Laws of Utah 1955, and Chapter 69, Laws of Utah 1957, and Chapter 77, Laws of Utah 1961 is amended to read:

**39-1-21. Adjutant General—Salary—Bond.**

The adjutant general shall receive a salary fixed by the legislature. He shall give an official bond to the state in the penal sum of \$10,000.00 to cover all duties imposed and offices conferred by law or authority on the adjutant general. He shall devote all of his time during the office hours of the military department to the duties of his office.

Approved March 14, 1963.

## CHAPTER 63

H. B. No. 62

(Passed March 5, 1963. In effect May 14, 1963)

## NATIONAL GUARD GROUP INSURANCE

**An Act Authorizing Members of the Utah National Guard to Constitute a Group for Life Insurance Purposes, and Establishing Requirements Therefor.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Enacted.**

Section 39-1-62, Utah Code Annotated 1953, is enacted to read:

**39-1-62. Group Insurance for National Guard.**

The lives of a group comprised solely of members of the Utah National Guard may be insured under a policy of group life insurance issued to an association of such members formed for purposes other than obtaining insurance which association shall be deemed the policyholder, to insure members of the Utah National Guard for the benefit of persons other than the association of any of its officials, subject to the following requirements:

(1) The premium for the policy shall be paid by the policyholder, either from the association's own funds, or from charges collected from the insured members specifically for the insurance.

(2) No policy may be placed in force unless and until at least 60% of the members of the association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, having elected to be covered.

(3) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the association. Such amounts shall in no event exceed \$20,000 in the case of any member.

(4) Such insurance policy shall conform to the provisions of the insurance code insofar as such code is not inconsistent with the provisions of this section.

Approved March 7, 1963.

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**MINES AND MINING**

## CHAPTER 64

S. B. No. 28

(Passed February 20, 1963. In Effect May 14, 1963)

## OIL AND GAS WELL LOGS

**An Act Amending Section 40-6-5, Utah Code Annotated 1953, as Enacted by Chapter 65, Laws of Utah 1955, Relating to Oil and Gas Commission; Providing for a Means to Prevent Any Advantage Being Gained in the Length of Time for Which a Well Log Will Be Held Confidential by Failure to File on the Date Required by the Commission.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 40-6-5, Utah Code Annotated 1953, as enacted by Chapter 65, Laws of Utah 1955, is amended to read:

**40-6-5. Commission—Additional Powers.**

The Commission shall also have authority to require:

(a) Identification of ownership of oil or gas wells and producing leases;

(b) The making and filing with the Commission of true and correct copies of well logs; provided, however, that logs of wells marked confidential shall be kept confidential for four months after the date on which the log is required to be filed by the Commission, unless the operator gives written permission to release such logs at an earlier date. And provided further, that upon application, after four months from the effective date of this act, by an owner or other person having a royalty or leasehold right, the Commission shall require the owner of a well theretofore drilled for oil and gas to file within four months of such order a true and correct copy of the log of such well;

(c) The drilling, casing and plugging of wells in such manner as to prevent (1) the escape of oil or gas from one stratum to another, (2) the intrusion of water into oil or gas stratum, (3) the pollution of fresh water supplies by oil, gas or salt water, or brackish water, and (4) blowouts, cavings, seepages, explosions and fires;

(d) The furnishing of reasonable security conditioned upon the performance of the duty to plug each dry or abandoned well;

(e) That the production of wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such standards as may be prescribed by the commission;

(f) That every person who produces oil or gas in the state keep and maintain for a period of five years complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission or its agents at all reasonable times within said period and that every such person file with the commission such reasonable reports as it may prescribe with respect to such oil and gas production;

(g) That a notice of intention to drill be filed with the commission before any well for oil or gas is commenced;

(h) Safety measures to prevent fires and blowouts.

Approved February 28, 1963.

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**CHAPTER 65**

S. B. No. 29

(Passed February 25, 1963. In Effect May 14, 1963)

**OIL AND GAS CONSERVATION**

**An Act Amending Section 40-6-11, Utah Code Annotated 1953, as Enacted by Chapter 65, Laws of Utah 1955, Relating to the Conservation**

**of Oil and Gas in the State of Utah and the Jurisdictional Applications of the Utah Oil and Gas Conservation Act.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 40-6-11, Utah Code Annotated 1953, as enacted by Chapter 65, Laws of Utah 1955, is amended to read:

**40-6-11. Lands to Which Act Is Applicable.**

This act shall apply to all lands in the state of Utah lawfully subject to its police power, and shall apply to lands of the United States or to lands subject to the jurisdiction of the United States over which the state of Utah has police power except to the degree that it is inharmonious with the uses, activities or regulations of the United States, and furthermore, the same shall apply to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative except that the commission may, with respect to such unit agreement, suspend the application of this act or any part of this act so long as the conservation of oil and gas and the prevention of waste as in this act provided is accomplished under such unit agreements but such suspension shall not relieve any operator from making such reports as may be required by the commission with respect to operations under any such unit agreement.

Approved March 1, 1963.

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## MOTOR VEHICLES

### CHAPTER 66

H. B. No. 40

(Passed March 13, 1963. In effect May 14, 1963).

#### MOTOR VEHICLE ACT

**An Act Amending Sections 41-1-1, Utah Code Annotated 1953, as Amended by Chapter 66, Laws of Utah 1955; 41-1-9, 41-1-19, as Amended by Chapter 66, Laws of Utah 1955, and Chapter 79, Laws of Utah 1961, 41-1-32, 41-1-49, 41-1-60, 41-1-64, as Amended by Chapter 66, Laws of Utah 1955, 41-1-71, 41-1-78, 41-1-79, 41-1-88, as Amended by Chapter 66, Laws of Utah 1953, Chapter 66, Laws of 1955 and Chapter 61, Laws of 1959, 41-1-90, 41-1-117, 41-1-118, and 41-1-142, Utah Code Annotated 1953, Pertaining to Motor Vehicles, a Record Fee and Extension of the Registration Deadline, Microfilm Admissibility in Court, a Change of the Impound Sale Time Period; and Enacting as New Sections 41-1-44.1, Utah Code Annotated 1953, Providing for the Issuance of "EX" Registration Plates to Specific Governmental Entities and 41-1-49.7, Utah Code Annotated 1953, Providing for Substitutes for Adequate Documentary Evidence of Title; and Repealing Sections 41-1-41 and 41-1-129; Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 41-1-1, Utah Code Annotated 1953, as amended by Chapter 66, Laws of Utah 1955, is amended to read:

**41-1-1. Definitions.**

The following words and phrases when used in this act shall, for the purpose of this act, have the following meanings respectively ascribed to them:

(a) "Vehicle." Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle." Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) "Motorcycle." Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(d) "Truck Tractor," Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) "Farm Tractor." Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(f) "Road Tractor." Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(g) "Trailer." Every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(h) "Semitrailer." Every vehicle without active power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests or is carried by another vehicle.

(i) "Specially Constructed Vehicle." Every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(j) "Reconstructed Vehicle." Every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(k) "Essential Parts." All integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(l) "Foreign Vehicle." Every vehicle of a type required to be registered hereunder brought into this state from another state, territory

or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(m) "Implement of Husbandry." Every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations.

(n) "Special Mobile Equipment." Every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction, or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section.

(o) "Pneumatic Tire." Every tire in which compressed air is designed to support the load.

(p) "Solid Tire." Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(q) "Metal Tire." Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(r) "Commission." The state tax commission of this state.

(s) "Department." The motor vehicle division of the state tax commission.

(t) "Person." Every natural person, firm, copartnership, association, or corporation.

(u) "Owner." A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or, in the event of a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this act.

(v) "Nonresident." Every person who is not a resident of this state and who does not engage in intrastate business within this state and operate in such business any motor vehicle, trailer, or semitrailer within this state;

Every person who engages in intrastate business within this state and operates in such business any motor vehicle, trailer, or semitrailer in this state or who, even though engaging in interstate commerce, maintains any such vehicles in this state as the home station of such vehicle shall be deemed to be a resident of this state, in so far as such vehicles are concerned in administering the provisions of this act.

(w) "Dealer." Every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered hereunder in this state.

(x) "Transporter." Every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

(y) "Manufacturer." Every person engaged in the business of con-



structing or assembling vehicles of a type required to be registered hereunder at an established place of business in this state.

(z) "Established Place of Business." The place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

(aa) "Public Garage." Every building or other place where motor vehicles are kept and stored by the public and where a charge is made for such storage and keeping of motor vehicles.

(bb) "Street or highway." The entire width between property lines of every way or place of whatever nature when any part thereof is open to the public, as a matter of right, for purposes of vehicular traffic.

(cc) "Weighmaster." A person, association of persons, or corporation who may weigh vehicles under this act.

(dd) "Certified Scale Weigh Ticket." A weigh ticket which has been duly issued by the weighmaster under this act.

(ee) "Actual Weight." The actual unladen weight of a vehicle or combination of vehicles as operated and certified to by a weighmaster.

(ff) "Gross Laden Weight." The weight of a vehicle or combination of vehicles, equipped for operation, to which shall be added the maximum load to be carried thereon.

(gg) "Interstate Commercial Vehicles." Vehicles operated primarily in more than one state and used or maintained for the transportation of persons for hire, compensation or profit, or designed, used, or maintained primarily for the transportation of property.

## Section 2. Section Amended.

Section 41-1-9, Utah Code Annotated 1953, is amended to read:

### 41-1-9. Records—Inspection by Public—Destruction.

All records of the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours. The department may charge a reasonable search fee not to exceed 50 cents for the inspection of each such document. However, no such fees shall be charged for the furnishing to persons of information necessary for their compliance with the provisions of this act.

The commission may destroy any records of the department which have been maintained on file for three years which it may deem obsolete and of no further service in carrying out the powers and duties of the department.

## Section 3. Section Amended.

Section 41-1-19, Utah Code Annotated 1953, as amended by Chapter 66, Laws of Utah 1955 and Chapter 79, Laws of Utah 1961, is amended to read:

### 41-1-19. Vehicles Subject to Registration—Exceptions.

Every motor vehicle, combination of vehicles, trailer, and semi-trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this act except:

(a) Any such vehicle driven or moved upon a highway in conformance with the provisions of this act relating to manufacturers, transporters, dealers, lien holders, or interstate commercial vehicles duly registered in another state and not owned by a resident of the state of Utah or under a temporary registration permit issued by the department or dealer as hereinafter authorized;

(b) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another;

(c) Any implement of husbandry, whether of a type otherwise subject to registration hereunder or not, which is only incidentally operated or moved upon a highway;

(d) Any special mobile equipment as herein defined; maximum load to be carried thereon.

(e) No certificate of title need be obtained for any vehicle of a type subject to registration owned by the government of the United States.

(f) Any such motor vehicle not designed, used, or maintained for the transportation of passengers for hire or for the transportation of property, provided such motor vehicle is duly registered in another state and is owned and operated by a nonresident of this state.

(g) Any such vehicle or combination of vehicles designed, used, or maintained for the transportation of persons for hire or for the transportation of property, provided such vehicle or combination of vehicles is duly registered in another state and is owned and operated by a nonresident of this state, and provided such vehicle or combination of vehicles has a gross laden weight of 18,000 pounds or less and an unladen weight of 7,000 pounds or less.

(h) Any trailer of 750 pounds or less unladen weight and not designed, used and maintained for the transportation of property or person for hire.

#### **Section 4. Section Amended.**

Section 41-1-32, Utah Code Annotated 1953, is amended to read:

#### **41-1-32. Payment of Taxes Before Registration.**

The department before issuing any motor vehicle license, except for the registration of motor ambulances, motor police patrol vehicles, motor fire engines, passenger cars and trucks owned and used by the United States Government or by the state of Utah or any of its political sub-divisions, shall require from every applicant for such license a certificate from the county assessor in which the motor vehicle has situs for taxation to the following effect:

(a) That the property tax on the said motor vehicle for the current year has been paid; or

(b) That in his opinion such tax is a lien on real property sufficient to secure the payment thereof; or

(c) That such motor vehicle is exempt by law from payment of property tax for the current year.

The department shall, before issuing any certificates of title to a motor vehicle, also require from every applicant for such certificate of title a receipt from the state tax commission showing that the sales

tax has been paid to the state of Utah on the sale of the motor vehicle upon which application for certificate of title has been made, or a certificate from the state tax commission showing that no sales tax is due on the sales of the automobile; provided, where a licensed dealer has made a report pursuant to Section 41-1-73, no receipt or certificate will be required.

**Section 5. Section Amended.**

Section 41-1-49, Utah Code Annotated 1953, is amended to read:

**41-1-49. Expiration of Registration.**

Every vehicle registration under this act and every registration card and every registration plate issued hereunder shall expire at midnight on the thirty-first day of December of each year, except as provided by Section 41-1-49.7. The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicle under the registration of such vehicle for the preceding year upon displaying the registration plates issued by the department for such year until midnight of the last day of February of the year for which the registration is required under the provisions of this act. When the last day of February falls on Sunday or a holiday, the registration deadline is extended to midnight of the next business day.

**Section 6. Section Amended.**

Section 41-1-60, Utah Code Annotated 1953, is amended to read:

**41-1-60. Registration Bulletins.**

The commission may annually, following renewal of registration, compile and publish in books or bulletins a list of all registered vehicles and may thereafter compile and publish supplements thereto at least every three months. The list of registered vehicles shall be arranged serially according to the registration numbers assigned to registered vehicles and shall contain in addition the names and addresses of registered owners and a brief description of each vehicle, including the motor or other identifying number thereof.

**Section 7. Section Amended.**

Section 41-1-64, Utah Code Annotated 1953, as amended by Chapter 66, Laws of Utah, 1955, is amended to read:

**41-1-64. New Owner to Secure Transfer of Registration and New Certificate of Title.**

The transferee before operating or permitting the operation of such vehicle on a highway shall present to the department the certificate of registration and the certificate of title, properly endorsed, and shall apply for and obtain a new certificate of title for said vehicle and a new registration therefor, as upon an original registration, except as permitted to sections 41-1-65 and 41-1-7.

**Section 8. Section Amended.**

Section 41-1-71, Utah Code Annotated 1953, is amended to read:

**41-1-71. When Department to Transfer and Issue New Certificate.**

The department upon receipt of a properly endorsed certificate of title and certificate of registration and proper application for registration, accompanied by the required fee and when satisfied as to the genuineness and regularity of such transfer and the right of the transferee to a certificate of title, shall reregister the vehicle as upon a new registration in the name of the new owner and issue a new certificate of registration and a certificate of title as upon an original application.

The department shall retain and appropriately file every surrendered certificate of title and every application for title for a period of not less than five years, such file to be so maintained as to permit the tracing of title of the vehicles designated therein. A microfilmed copy of a departmental record, accompanied by certification, shall be admissible in any court in like manner as the original document.

**Section 9. Section Amended.**

Section 41-1-78, Utah Code Annotated 1953, is amended to read:

**41-1-78. Owner to Return Certificate of Title, Card and Registration Plates.**

Any person dismantling or wrecking any registered vehicle shall immediately forward to the department the certificate of title, registration card, and the registration plate or plates last issued for such vehicle.

**Section 10. Section Amended.**

Section 41-1-79, Utah Code Annotated 1953, is amended to read:

**41-1-79. Sale of Vehicle to Be Dismantled—Permit.**

Any person who sells a motor vehicle as scrap or to be dismantled or destroyed shall assign the certificate of title thereto to the purchaser and shall deliver such certificate so assigned to the department with an application for a permit to dismantle such vehicle. The department shall thereupon issue to the purchaser a permit to dismantle the same which shall authorize such person to possess or transport such motor vehicle or to transfer ownership thereto by endorsement upon such permit. A certificate of title shall not again be issued for such motor vehicle in the event it is scrapped, dismantled, or destroyed.

**Section 11. Section Amended.**

Section 41-1-88, Utah Code Annotated 1953, as amended by Chapter 66, Laws of Utah 1953; Chapter 66, Laws of Utah 1955, and Chapter 61, Laws of Utah 1959, is amended to read:

**41-1-88. Non-Resident Owners or Operators—Temporary Permits—Fee—Duration—Exemptions—Monthly Mileage Fees—Disposition of Fees—Rules and Regulations—No Duty to Issue Permit or Apportion Fees.**

(a) In lieu of any other fee provided for herein, the state tax commission is authorized to impose upon residents of other states while operating in Utah the registration and other fees charged by such other states for like vehicles owned or operated therein by residents of Utah.

The state tax commission may issue from its office or through the Utah highway patrol acting as agent for the state tax commission a temporary permit to such nonresident owners or operators of a motor vehicle, trailer or semitrailer not registered in this state as the state tax commission shall in its discretion deem advisable. Such temporary permit shall be in lieu of registration under the provisions of this act, and no other fee (except fuel taxes) shall be charged for the operation of such vehicles upon the public highways of the state. The fee for such temporary permit shall be three per cent of the amount required for a full year's registration of similar weight vehicles in the state of Utah, but in no event less than \$3.00 for single units and \$5.00 for multiple units, provided that no such fee or any other resignation fee shall be required with respect to any semitrailer or trailer registered outside the state where it is shown to the satisfaction of the state tax commission that such semitrailer or trailer is being pulled by a tractor or other power unit which is registered within the state of Utah in conjunction with a semitrailer or trailer likewise registered within the state of Utah.

The temporary permit provided for herein may be issued in the discretion of the state tax commission for a maximum of 96 hours per trip. No temporary permits or other registration fee shall be required from nonresident owners or operators of vehicles or combination of vehicles having: (1) A gross laden weight of not more than 18,000 pounds for each vehicle operated as a single unit, or for each combination of vehicles if operated as such, or (2) an unladen weight of not more than 7,000 pounds for each vehicle if operated as a single unit, or for each combination of vehicles if operated as such.

(b) The state tax commission may in its discretion, apportion the annual fees provided for in section 41-1-127 (f) on the basis of miles traveled by allowing resident and nonresident owners or operators to report and pay monthly a mileage fee which shall not be less than \$5.00 per month per report on all mileage within the state of Utah at the following rates per mile based upon the gross laden weight of each vehicle if operated as a single unit, or each combination of vehicles if operated as such:

25,000 pounds or less .....	1/2-cent per mile
25,001 pounds to 45,000 pounds .....	one cent per mile
45,001 pounds to 60,000 pounds .....	1 1/4 cents per mile
60,001 pounds and above .....	1 1/2 cents per mile

(c) All fees collected from temporary permits and mileage fees collected under subsection (b) of this section shall be credited monthly to the state highway construction and maintenance fund. The state tax commission is hereby authorized to adopt and promulgate such rules and regulations as in its judgment are necessary to carry out the provisions of this act.

(d) Nothing contained herein shall be construed as imposing upon the state tax commission or its agents any duty to issue any temporary permit to the owner or operator of any vehicle or to apportion the annual fees on a mileage basis.

#### Section 12. Section Amended.

Section 41-1-90, Utah Code Annotated 1953, is amended to read:

**41-1-90. Manufacturer's or Dealer's Plates.**

A manufacturer or dealer owning any vehicle of a type otherwise required to be registered hereunder may, except as provided in section 41-1-92, operate or move the same upon the highways without registering each such vehicle upon condition that any such vehicle display thereon in the manner prescribed in sections 41-1-47 and 41-1-48, a special plate or plates issued to such owner as provided in sections 41-1-93 and 41-1-94.

**Section 13. Section Amended.**

Section 41-1-117, Utah Code Annotated 1953, is amended to read:

**41-1-117. Sale of Vehicle.**

If the owner or lien holder of such vehicle so seized does not recover said vehicle within thirty days from the date of seizure, the department is hereby authorized to sell the vehicle as provided in section 41-1-135.

**Section 14. Section Amended.**

Section 41-1-118, Utah Code Annotated 1953, is amended to read:

**41-1-118. Records Kept by Public Garages.**

Every person engaged in the business of conducting a public garage shall keep a record of every motor vehicle stored therein for compensation for a period longer than twelve hours, which record shall include the name and address of such person storing such vehicle, together with a brief description of such vehicle, including the name or make, the identification number and the license number thereof, as shown by the number plates and registration certificate upon such vehicle; provided, however, that such registration certificate shall be attached in a clearly discernible position. Every such record shall be opened to inspection by any peace officer.

**Section 15. Section Amended.**

Section 41-1-142, Utah Code Annotated 1953, is amended to read:

**41-1-142. Prohibited Acts—Penalty.**

The following acts are prohibited and the commission thereof is hereby declared to be a misdemeanor.

(a) To break, injure, interfere with or remove from any vehicle any seal, lock or device thereon for holding or displaying thereon any registration plate or registration card attached thereto for denoting registration and identity of such vehicle.

(b) To remove from any registered vehicle the registration plate or registration card issued or attached thereto in respect of its registration.

(c) To place or display any such registration plate or card upon any other vehicle than that in respect whereof the same was issued by the department.

(d) To use or permit the use or display of any registration plate, registration card or permit upon or in the operation of any vehicle other than that for which it was issued.

(e) To forge, falsify, counterfeit or alter any plate, card, permit,

assignment or other thing or document relating to the registration of, or right title or interest to or in any vehicle subject to registration.

(f) To operate upon any public highway of this state any vehicle required by law to be registered without having the registration plate or plates securely attached thereto, and registration card issued by the department to denote registration thereof securely attached thereto except that the registration card issued by the department shall be sealed by the department to all trailers and semitrailers, save in such cases as is by law expressly excepted.

(g) To operate on any public highway any vehicle required by law to be registered without having previously paid the registration fee or tax required by law in respect thereof.

(h) For any weighmaster to knowingly make any false entry in his record of weights of vehicles subject to registration by law, or to knowingly report to the commission or department any false information with respect to such weights.

(i) For any inspector, officer, agent, employee or other person performing any of the functions required by law with respect to the registration or operation of vehicles subject to registration, to do, permit, cause, connive at or suffer to be done any act with the intent, tendency of probable effect to injure any person, deprive him of his property, or to injure or defraud the state of Utah with respect to its lawful revenues under the law relating to registration of vehicles.

(j) For any person to combine, conspire or confederate with another or others to do, attempt to do, or cause or suffer to be done any of the acts or things in this act prohibited as a misdemeanor.

(k) It is a misdemeanor for any person to violate any of the provisions of this act unless such violation is by this act or other law of this state declared to be a felony.

#### **Section 16. Section Enacted.**

Section 41-1-44.1, Utah Code Annotated 1953, is enacted to read:

##### **41-1-44.1. Vehicles to Have "X" Plates.**

Every registration plate issued to any town, city, board of education, or other state institutions of learning, county, or other governmental department in the state or to the state of Utah itself for use on vehicles they own and operate shall have displayed upon it the letters, "EX," provided that the provisions contained in this section shall not be construed to include motor vehicles in the service of the governor of the state, the attorney general, or any federal, state or local governmental departments engaged to investigative work where secrecy is necessary. The tax commission shall be responsible for the issuance of "EX" plates and shall promulgate all rules and regulations pertaining thereto.

#### **Section 17. Section Enacted.**

Section 41-1-49.7, Utah Code Annotated 1953, is enacted to read:

##### **41-1-49.7. Transfer of Registration Cards and Plates.**

Every registration, registration card and registration plate issued hereunder to any town, city, board of education, county or other gov-

ernmental department in the state or to the state of Utah itself shall be in full force and effect until such time as the vehicle for which such registration, registration card or registration plate was issued is no longer owned and operated by such town, city, board of education, county or other governmental department in the state or by the state itself, or until such time as the department shall in its discretion declare its expiration.

This section shall not be construed to apply to motor vehicles in the service of the governor of the state, the attorney general, or any federal, state or local governmental departments engaged in investigative work where secrecy is necessary.

Whenever the owner of any vehicle subject to the provisions of this section transfers or assigns title or interest therein, the registration of that vehicle shall expire. The transferor shall be required to notify the department of such transfer or assignment and to forward the registration plates to the department within twenty days from the date of transfer or assignment.

#### **Section 18. Sections Repealed.**

Section 41-1-41 and 41-1-129, Utah Code Annotated 1953, are hereby repealed.

Approved March 18, 1963.

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### **CHAPTER 67**

H. B. No. 22

(Passed February 15, 1963. In Effect May 14, 1963)

#### **MOTOR VEHICLE REGISTRATION FEES**

**An Act Amending Section 41-1-127, Utah Code Annotated 1953, as Amended by Chapter 62, Laws of 1959, Regarding Registration Fees for Motor Vehicles Excepting Trailers Pulled by Four Wheel Pick-up Trucks Not Operated for Compensation or for Hire.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 41-1-127, Utah Code Annotated 1953, as amended by Chapter 62, Laws of Utah 1959, is amended to read:

#### **41-1-127. Registration Fees—Gross Laden Weight.**

There shall be paid to the department for the registration of every motor vehicle, combination of vehicles, trailer or semi-trailer, at the time application is made for registration:

(a) A registration fee of \$2.50 for the registration of every motorcycle or trailer of 750 pounds or less unladen weight.

(b) A registration fee of \$5.00 for the registration of every motor vehicle not designed, used, or maintained primarily for the transporting of passengers for hire, or for the transportation of property.

(c) A registration fee of \$5.00 for the registration of every house trailer, trailer coach, or like trailer providing living quarters for persons and not operated for hire.



(d) A registration fee of \$5.00 for each commercial vehicle, except trailers or semitrailers registered outside the state as provided in section 41-1-88, owned by a person who has been granted permission by the commission to comply with the provisions of section 41-1-88, provided that any such fee paid by a nonresident shall be a non-refundable service charge, and not a registration fee.

(e) The registration fee for vehicles not equipped wholly with pneumatic tires shall be one and one-half times the amount required for vehicles equipped with pneumatic tires.

(f) A registration fee on all motor vehicles designed, used, or maintained for the transportation of passengers for hire or for the transportation of property, based on gross laden weight as set forth in the licensee's application for registration, unless exempt under section 41-1-19, or unless complying with the provisions of section 4-1-1-88.

Where motor vehicles, except passenger cars and four wheeled pickup trucks not operated for compensation or for hire and the combined gross weight of the truck and trailer does not exceed 10,000 pounds, are operated in combination with semitrailers or trailers (including house trailers), each such motor vehicle shall be required to register for the total gross laden weight of all units of said combination. A set of identification plates shall be issued for each motor vehicle so registered.

Semitrailers and trailers shall be registered separately under subsection (g) of this section, unless said semitrailers or trailers are exempt from registration or otherwise provided for under the provisions mentioned in subsection (g) of this section.

Gross laden weight shall be computed in units of 3,000 pounds, a fractional part of 3,000 pounds being considered a full unit.

The schedule of registration fees based on gross laden weight for every vehicle or combination of vehicles, wholly equipped with pneumatic tires, shall be as follows:

6,000 pounds or less .....	\$ 7.50
6,001 pounds and not over 9,000 pounds .....	15.00
9,001 pounds and not over 12,000 pounds .....	25.00
12,001 pounds and not over 15,000 pounds .....	35.00
15,001 pounds and not over 18,000 pounds .....	50.00
18,001 pounds and not over 21,000 pounds .....	65.00
21,001 pounds and not over 24,000 pounds .....	80.00
24,001 pounds and not over 27,000 pounds .....	100.00
27,001 pounds and not over 30,000 pounds .....	120.00
30,001 pounds and not over 33,000 pounds .....	140.00
33,001 pounds and not over 36,000 pounds .....	160.00
36,001 pounds and not over 39,000 pounds .....	180.00
39,001 pounds and not over 42,000 pounds .....	200.00
42,001 pounds and not over 45,000 pounds .....	225.00
45,001 pounds and not over 48,000 pounds .....	250.00
48,001 pounds and not over 51,000 pounds .....	275.00
51,001 pounds and not over 54,000 pounds .....	300.00
54,001 pounds and not over 57,000 pounds .....	325.00
57,001 pounds and not over 60,000 pounds .....	350.00
60,001 pounds and not over 63,000 pounds .....	375.00
63,001 pounds and not over 66,000 pounds .....	400.00

66,001 pounds and not over 69,000 pounds .....	430.00
69,001 pounds and not over 72,000 pounds .....	460.00
72,001 pounds and not over 75,000 pounds .....	490.00
75,001 pounds and over .....	520.00

(g) Owners of trailers and semitrailers, not registered under subsection (d) of this section, or not registered under subsection (a), or not exempt under section 41-1-19, or not complying with the provisions of section 41-1-88, shall be required to register each such trailer and semitrailer and display thereon an identification plate, the fee for which shall be \$5.00.

(h) The tax commission shall require that every vehicle registered by gross laden weight, have painted, or stenciled upon both the left and right sides thereof, in a conspicuous place, in letters of a reasonable size as determined by the tax commission, the gross laden weight for which it is registered; provided, where vehicles are registered in combination, the gross laden weight for which the combination of vehicles is registered shall be displayed upon the power unit thereof as provided herein. It shall be unlawful for an owner or operator of such vehicle or combination of vehicles to display a gross laden weight other than that shown on the certificate of registration of the vehicle.

Approved February 18, 1963.

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## CHAPTER 68

H. B. No. 155.

(Passed March 14, 1963. In effect May 14, 1963.)

### OPERATORS' AND CHAUFFEURS' LICENSES

**An Act Amending Section 41-2-13, Utah Code Annotated 1953, Relating to Operators' and Chauffeurs' Licenses; Providing for Special Identification Markings or Colorings on Licenses or Permits Issued to Minors.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 41-2-13, Utah Code Annotated 1953, is amended to read:

#### 41-2-13. (1) Licenses Issued to Operators and Chauffeurs — Temporary Licenses.

The department shall issue to every person privileged to drive as an operator, an operator's license certificate, and to every person privileged to drive as a chauffeur, a chauffeur's license certificate. Any person privileged to drive as a chauffeur shall not be required to procure an operator's license, but no person shall drive any motor vehicle as a chauffeur unless licensed as a chauffeur.

(2) Every such license certificate shall bear thereon the distinguishing number assigned to the licensee and shall contain the name, age, residence address and a brief description of the licensee for the purpose of identification, also a space for the signature of the licensee, and every chauffeur's license certificate shall bear thereon a photograph of the licensee.

(3) The department, upon determining after an examination that an applicant is mentally and physically qualified to be granted a license, may issue to such a person a receipt for the fee which shall serve as a temporary license certificate allowing him to operate a motor vehicle while the department is completing its investigation and determining all of the facts bearing upon whether he is entitled to be licensed. Such receipt must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license certificate has been issued or for good cause the privilege has been refused. The department shall indicate on such receipts a date after which it ceased to be valid as a license certificate.

(4) The department will, when issuing to any person under 21 years of age, issue to all such persons who have qualified, an instruction permit or a temporary permit which is plainly printed with the word "minor," or an operator's or chauffeur's license of a special color not used for issue to persons 21 years of age and over.

Approved March 18, 1963.

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## CHAPTER 69

H. B. No. 3

(Passed February 15, 1963. In effect May 14, 1963)

### TRAFFIC SAFETY COMMITTEE

#### **An Act Providing for a State Traffic Safety Coordinating Committee; Prescribing Its Duties and Functions.**

*Be it enacted by the Legislature of the State of Utah:*

##### **Section 1. Safety Coordinating Committee.**

The Utah state traffic safety coordinating committee is established under the direction of the governor. The traffic safety coordinating committee shall exchange information and coordinating traffic safety plans among the political subdivisions of the state. Nothing contained in this law shall operate in derogation of powers conferred upon departments, agencies or instrumentalities of state or local governments by any existing law.

##### **Section 2. Officers of Committee.**

(1) The state traffic coordinating committee shall consist of the following officers: the governor, who shall be the chairman of the committee; the attorney general; the commissioner of public safety; the chief of the highway patrol; the director of highways; the chairman of the state liquor commission; the director of the state health department; the president of the Utah safety council; a representative of the judiciary appointed by the governor; a member of the legislative council designated by the council; and the state superintendent of public instruction.

(2) The committee shall meet at the call of the chairman, but not less than once every three months. It shall adopt a procedure for the

transaction of its business and shall keep a record of its transactions, findings, and determinations which shall be a public record.

### **Section 3. Duties of Committee.**

The state traffic safety coordinating committee shall:

(1) Review plans of various agencies of national, state, and local government regarding traffic safety.

(2) Act as the governor's planning agency in traffic safety matters, and in this capacity undertake special studies and investigations and submit reports and render advice to the governor.

(3) Provide information and cooperate with the state legislature or any of its committees in conducting studies.

(4) Submit to the governor plans and recommendations for improvement of traffic safety within the state. Such plans shall be submitted as deemed advisable by the committee but at least once each year in the month of October.

Approved February 15, 1963.

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## **CHAPTER 70**

H. B. No. 44.

(Passed March 11, 1963. In effect May 14, 1963.)

### **PUBLICLY-OWNED VEHICLES**

#### **An Act Amending Section 41-7-1, Utah Code Annotated 1953, and Adding Section 41-7-1.5, Relating to Publicly-Owned Motor Vehicles.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 41-7-1, Utah Code Annotated 1953, is amended to read as follows:

##### **41-7-1. Vehicles to Bear Sign Indicating Ownership — Exception.**

All motor vehicles owned and operated by any town, city, board of education, school district or other district, county, or other governmental subdivision or district, shall have painted in a conspicuous place on both sides thereof a designation of the ownership of such motor vehicle in the following language, to wit: "The property of ....." in plain and conspicuous letters not less than three inches in height, and such designation shall be kept clear and distinct and free from defacement, mutilation, grease and other obscuring matter so that it is plainly visible at all times; provided, that this chapter shall not be construed to include motor vehicles used in investigative work where secrecy is essential or used by a town, city or county police or sheriff's department.

#### **Section 2. Section Enacted.**

Section 41-7-1.5, is enacted to read as follows:

##### **41-7-1.5. Marking State Motor Vehicles.**

All state owned and operated motor vehicles shall be marked as pro-

vided in this section. The department of finance shall be responsible for marking state-owned vehicles for all departments, universities and colleges and shall promulgate all rules and regulations pertaining thereto. Identification marking shall be of a size and design determined by the department of finance with the approval of the governor, and such marking shall be kept clear and distinct and free from defacement, mutilation, grease and other obscuring matter so that it is plainly visible at all times. This chapter shall not be construed to include motor vehicles in the service of the governor. Exceptions may be granted departments engaged in investigative work where secrecy is essential; said exceptions shall be requested in writing and shall be subject to the approval of the department of finance and the governor. "Departments" and "universities and colleges" as used shall be applicable herein as set forth in sections 63-2-37 and 63-2-38, Utah Code Annotated 1953.

Approved March 11, 1963.

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## CHAPTER 71

S. B. No. 75.

(Passed March 14, 1963. In effect May 14, 1963.)

### THE VEHICLE EQUIPMENT SAFETY COMPACT

**An Act Ratifying the Vehicle Equipment Safety Compact Proposed for Adoption by the Various States of the United States by the Council of State Governments.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Vehicle Equipment Safety Compact Ratified.**

The vehicle equipment safety compact is hereby unconditionally ratified, approved and confirmed for and by the State of Utah, and is entered into with all other jurisdictions legally joining therein.

#### **Section 2. Vehicle Equipment Safety Compact.**

The text of said compact is as follows:

#### "VEHICLE EQUIPMENT SAFETY COMPACT

##### ARTICLE I

##### Findings and Purposes

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this Article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

## ARTICLE II Definitions

As used in this compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

## ARTICLE III The Commission

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the Commission. The Commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the Commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the Commission in such form as the Commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the Commission for expenses actually incurred in attending Commission meetings or while engaged in the business of the Commission.

(b) The Commissioners shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The Commission may appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission, and together with the Treasurer shall be bonded in such amount as the Commission shall determine. The Executive Director also shall serve as secretary. If there be no Executive Director, the Commission shall elect a Secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director with the approval of the Commission, or the Commission if there be no Executive Director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commissioner's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the Commission shall be eligible for social security coverage in respect to old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all Commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The Commission annually shall make to the governor and legislature of each party state a report covering the activities of the Commis-

sion for the preceding year, and embodying such recommendations as may have been issued by the Commission. The Commission may make such additional reports as it may deem desirable.

#### ARTICLE IV

##### Research and Testing

The Commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the Commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and the administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

#### ARTICLE V

##### Vehicular Equipment

(a) In the interest of vehicular and public safety, the Commission may study the need or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the Commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this Article. No less than sixty days after the publication of a report containing the results of such study, the Commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this Article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the Commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the Commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the Commission and hereby declare its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The Commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this Article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.



(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any Commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this Article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the Commission pursuant to this Article if such agency specifically finds, after public hearing on due notice, that a variation from the Commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the Commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

## ARTICLE VI

### Finance

(a) The Commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the Commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article III (h) hereof, the Commission shall not incur any obligation

prior to the allotment of funds by the party states adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

## ARTICLE VII

### Conflict of Interest

(a) The Commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the Commission and contractors with the Commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the Commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a Commission rule or regulation adopted pursuant to this Article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the Commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the Commission subject to cancellation by the Commission.

(b) Nothing contained in this Article shall be deemed to prevent a contractor for the Commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the Commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

## ARTICLE VIII

### Advisory and Technical Committees

The Commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

**ARTICLE IX****Entry Into Force and Withdrawal**

(a) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

**ARTICLE X****Construction and Severability**

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.”

**Section 3. Department of Highway to Promote Public Safety.**

The Department of Highways, acting upon recommendations of the Vehicle Equipment Safety Commission and pursuant to the Vehicle Equipment Safety Compact, shall provide a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this act.

**Section 4. Present Law to be Superseded — New Rules and Regulations.**

The existing provisions of Utah law prescribing motor vehicle equipment requirements shall continue to be of force and effect only until superseded by a rule, regulation or code adopted by the Department of Highways of the State of Utah pursuant to the Vehicle Equipment Safety Compact. Any such rule, regulation or code shall specify the provision or provisions of existing statute being superseded in accordance with and as required by this act. Any such provision or provisions are hereby repealed, effective on the date when the rule, regulation or code superseding such provision or provisions become effective pursuant to the Vehicle Equipment Safety Compact and such other provisions of this act as may be applicable.

**Section 5. Rule Must be Approved by Legislature.**

Pursuant to Article V(e) of the Vehicle Equipment Safety Compact,

it is the intention of this state and it is hereby provided that no rule, regulation or code issued by the Vehicle Equipment Safety Commission in accordance with Article V of the compact shall take effect until approved by act of the legislature.

**Section 6. Commissioner Appointed by Governor.**

The commissioner of this state on the Vehicle Equipment Safety Commission shall be appointed by the governor. If he is an officer of the state government, the commissioner of this state appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place and stead on the Vehicle Equipment Safety Commission. Subject to the provisions of the compact and bylaws of the Vehicle Equipment Safety Commission, the authority and responsibility of such alternate shall be as determined by the commissioner designating such alternate.

**Section 7. Public Employees Retirement System to Make Agreement.**

The Public Employees retirement system may make an agreement with the Vehicle Equipment Safety Commission for the coverage of said Commission's employees pursuant to Article III (f) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

**Section 8. Departments to Assist Within Appropriation.**

Within appropriations available therefor, the departments, agencies, and officers of the government of this state may cooperate with and assist the Vehicle Equipment Safety Commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to cooperate with the Commission.

**Section 9. Department of Highways to File Documents.**

Filing of documents as required by Article III (j) of the compact shall be with the Department of Highways of the State of Utah .

**Section 10. Budgets to Department of Highways.**

Pursuant to Article VI (a) of the compact, the Vehicle Equipment Safety Commission shall submit its budgets to the Department of Highways of the State of Utah.

**Section 11. Department to Inspect Accounts.**

Pursuant to Article VI (e) of the compact, the Department of Highways of the State of Utah is hereby empowered and authorized to inspect the accounts of the Vehicle Equipment Safety Commission.

**Section 12. Executive Head Means Governor.**

The term "executive head" as used in Article IX (b) of the compact shall, with reference to this state, means the governor.

**Section 13. Effective Date.**

This act shall take effect upon approval, and upon its enactment into law by at least five other states of the United States of America.

Approved March 18, 1963.

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**CHAPTER 72**

S. B. No. 8

(Passed March 16, 1963. In effect May 14, 1963)

**OFF-HIGHWAY GAS REFUND**

**An Act Amending Section 41-11-6, Utah Code Annotated 1953, as Amended by Chapter 67, Laws of Utah 1953, as Amended by Chapter 74, Laws of Utah 1955, as Amended by Chapter 83, Laws of Utah 1957, as Amended by Chapter 69, Laws of Utah 1959, as Amended by Chapter 90, Laws of Utah 1961, Relating to Motor Fuel Tax Refund for Off-Highway Purposes; Amending the Form and Amount of Claims.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 41-11-6, Utah Code Annotated 1953, as enacted by Chapter 69, Laws of Utah 1959, is amended to read:

**41-11-6. Exemption of Tax on Fuels—Refund of Tax.**

There is hereby levied and imposed a tax of six cents per gallon upon the sale or use of all motor fuels sold, used or received for sale or use in this state, except that upon all gasoline or special fuel sold at airports exclusively for the use of airplanes there is hereby levied and imposed an excise tax of four cents per gallon, excepting such motor fuels sold or used in this state as have been manufactured by low-temperature carbonization within the state of Utah from coals, oil shales, rock asphalts, solid hydrocarbons of Utah, and such motor fuels as are or have been brought into this state and sold in original packages as purely interstate commerce sales and except sales to the United States government and its agencies, and except sales to municipalities, counties, school districts, and every other arm or branch of the Utah state government in quantities as to each sale of twelve hundred fifty gallons or more, provided, however, that any person who shall purchase and use within the state of Utah any motor fuel for the purpose of operating, running or propelling stationary farm engines and self-propelled farm machinery used solely for non-highway agricultural uses, and who shall have paid the tax on such motor fuel as provided by this section, shall be entitled to a refund of such tax subject to the conditions and limitations as hereinafter provided.

Producers, refiners and/or distributors shall compute the tax on the amount of motor fuel produced, purchased, received or refined in this state, and all distributors shipping motor fuels into this state shall compute the tax on the total amount of motor fuels received for sale or use in this state; provided however that licensed distributors under this act may sell motor fuel to other licensed distributors hereunder without the payment or collection of the tax thereon and in which event the

licensed distributor making such sale or sales shall report the same to the state tax commission in his monthly report of sales as provided under Section 41-11-7 of this act and the licensed distributor receiving said motor fuel shall be liable for the tax thereon as provided by this act, and shall report the receipt of said motor fuel to the state tax commission and pay the tax thereon as prescribed by this act. If any motor fuels have been purchased outside of this state and brought into this state in original packages from a distributor for the use of the consumer, then such tax shall be imposed upon the use of such fuels. It is the purpose and intent of this chapter to impose and levy said tax upon the sale or use of motor fuels as defined in this chapter whether such fuels are used in motor vehicles or for other purposes, and by whomsoever sold or used, including municipalities, counties, school districts and every other arm or branch of the state government in quantities as to each sale of less than twelve hundred fifty gallons, provided however that the government of the United States, its divisions and agencies, shall be exempt from the imposition of this tax.

Every distributor and retail dealer of motor fuels defined in this act shall add the amount of the taxes levied and assessed by this chapter to the price of such motor fuels, it being the purpose and intent of this provision that the tax levied under the provisions of this chapter is in fact a levy on the consumer, and the levy on the distributors as specified in said chapter is merely an agent of the state for collection of said tax. This provision shall in no way affect the method of collection of said taxes as specified in this chapter.

(2) Every person, firm or partnership desiring to qualify for refund under the provisions of this act shall apply in writing to the state tax commission upon a form to be prescribed by it for a permit to obtain a refund in accordance with the provisions hereof.

Such original application, to receive a permit for refund of motor fuel tax, shall contain: (1) the name of applicant, (2) his address, (3) location and number of acres owned and operated and location and number of acres rented and operated, the latter of which must be verified by affidavit from the legal owner; (4) number of acres planted to each crop, type of soil and whether irrigated or dry, and (5) make, size, and power rating of each piece of equipment using motor fuel. When applicant is an operator of self-propelled or tractor pulled farm machinery with which he works for hire doing custom jobs for other farmers, said application shall include such information as the state tax commission requires in relation thereto and shall all be contained in and be considered part of the said original application. The applicant shall also file with the application for a permit a certificate of the county assessor showing each piece of equipment using motor fuel. This original application and all information contained therein shall constitute a permanent file in the name of the applicant with the state tax commission.

Any person claiming the right to a refund of such state excise tax, must file, by September thirtieth of each year, a claim with the state tax commission for the claimed refund for the fiscal year of July first of the previous year to June thirtieth of the current year. The claim shall state the name and address of the claimant; the number of gallons of motor fuels purchased for agricultural non-highway uses, and the

amount paid therefore; the applicant shall further support his claim by submitting the original invoice or copy of the original invoice. No more than one claim for tax refund may be filed annually by each user of refund gasoline.

(3) Upon approval by the state tax commission of such claim for refund, the state treasurer shall make payment of the amount to be justly due as a refund to the claimant, provided, however, that there shall be deducted from the gross amount of each refund claim approved for payment that percentage, as cost of administration, which the actual cost of administration of this act bears to the total amount refunded as based upon the annual average administrative costs of refunds made, as experienced during the two years immediately prior to the year during which the refund is claimed, which amount so deducted shall be credited to the state tax commission as cost of administration. During the first year in which this act shall be in force and effect, there shall be deducted from each claim for refund approved for payment five per cent (5%), which shall be credited to the state tax commission as cost of administration. In addition to any other amounts deducted from the claimed refund the state treasurer shall also deduct two per cent (2%) of the selling price of the refund motor fuel, which shall be credited to the state general fund as if the same were collected as a sales tax. Such payment of claim shall be made on or before December 31 of each year, provided that no refund shall be paid on any claim of less than \$10.00. The total amount of refunds shall be paid from motor fuel taxes.

(4) The state tax commission shall have the power to put into effect all necessary rules and regulations for filing, and enforcing the provisions of this act, examining claims, to prescribe forms for making claims, and to refuse to accept as evidence of purchase of payment any instruments which show alteration or which fail to indicate the quantity of the purchase, the price of the motor fuel, a statement that it is purchased for purposes other than transportation, and the date of purchase and delivery. When the state tax commission is not satisfied with the evidence submitted in connection with the claim, or when it deems the evidence of use insufficient to enable it to determine that the claimant is entitled to a refund, it may reject such claim or it may require additional evidence.

(5) If any person having filed an original application for permit for refund and a claim for refund, and having presented all evidence required by the state tax commission feels aggrieved by the decision of the commission, such person may apply to the commission for a hearing by petition in writing within thirty days after all or part of his claim is denied, and said petition shall set forth the reasons why such hearing should be granted and why the amount claimed should be granted. The state tax commission as soon as practicable shall set the matter for hearing and notify the petitioner of the time and place fixed by the commission for such hearing. After such hearing, the state tax commission may make such order in the matter as may appear just and lawful and shall furnish a copy of such order to the petitioner.

(6) Any person who shall make any false claim or report or statement, either as claimant, agent, or creditor, with intent to defraud or secure a refund to which the claimant is not entitled, shall be guilty of

a misdemeanor, and the state tax commission shall initiate the filing of a complaint for alleged violations of this act. In addition to the foregoing penalty such person shall not for a period of five years thereafter be entitled to receive any refund as a claimant or as a creditor of a claimant for refund.

(7) Any notice required to be mailed to the debtor under the provisions of this act, if mailed to him at his last known address as shown on the records of the state tax commission shall be sufficient for the purposes of this act.

(8) If any section, sentence, clause or phrase in this act shall for any reason be judicially declared to be unconstitutional or void, such decision shall not invalidate the remaining portions of this act.

(9) There is appropriated from the motor fuel tax fund to the state tax commission the sum of \$50,000.00 in addition to any other appropriation provided, to administer this act during the first biennium.

Approved February 16, 1963.

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## NAMES

### CHAPTER 73

H. B. No. 19

(Passed February 8, 1963. In effect May 14, 1963)

#### TRANSACTING BUSINESS UNDER ASSUMED NAME

**An Act Providing for the Filing of an Affidavit by Persons Transacting Business Under an Assumed Name and Repealing Chapter 2 of Title 42, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

##### **Section 1. File Certificate With Secretary of State.**

Every person or persons who shall carry on, conduct or transact business in this state under an assumed name, whether such business be carried on, conducted or transacted as an individual, association, partnership, corporation or otherwise, shall file in the office of the secretary of state a certificate setting forth the name under which such business is, or is to be carried on, conducted or transacted, and the full true name, or names, of the person or persons owning, and the person or persons carrying on, conducting or transacting such business, the location of the principal place of business and the post office address, or addresses of such person or persons. Such certificate shall be executed by the person or persons owning, and the person or persons carrying on, conducting or transacting such business and shall be filed not later than thirty days after the time of commencing to carry on, conduct or transact said business.

##### **Section 2. Filing New Certificate.**

A new certificate shall be filed, as provided in Section 1 of this act not later than thirty days after any change in the person or persons owning or carrying on, conducting or transacting such business.

##### **Section 3. Secretary of State to Keep Alphabetical Index.**

The secretary of state shall keep an active alphabetical index of all persons filing the certificates provided for herein, and for indexing and



filing each such certificate shall collect a fee of \$1.00. A copy of any such certificate certified by the secretary of state shall be presumptive evidence of the facts therein contained.

#### **Section 4. Filing Period Eight Years.**

A filing made pursuant to the provisions of this act shall be effective for a period of eight years from the date of filing. At the expiration of that period of time if no new filing is made by or on behalf of that person or persons who made said filing, the secretary of state shall send a notice by regular mail, postage prepaid, addressed to such person or persons at their post office address shown in the filing indicating that it has expired. If no new filing is made within thirty days after the date of mailing said notice, the secretary of state shall remove said name from said active alphabetical index, and place the same on a permanent inactive alphabetical index.

#### **Section 5. Exceptions to Chapter.**

This chapter shall in no way affect or apply to any corporation duly organized under the laws of this state or under the laws of any other state, which shall carry on, conduct or transact its business under its true corporate name.

#### **Section 6. Failure to Comply—Penalty.**

Any person or persons who shall carry on, conduct or transact any such business under an assumed name without having complied with the provisions of this act shall not sue, prosecute or maintain any action, suit, counterclaim, cross complaint or proceeding in any of the courts of this state until the provisions of this chapter have been complied with, and any such person or persons so failing to comply shall be guilty of a misdemeanor.

#### **Section 7. Repealing Chapter 2 of Title 42.**

Chapter 2 of Title 42, Utah Code Annotated 1953, is hereby repealed. Approved February 11, 1963.

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## **PENSIONS**

### **CHAPTER 74**

S. B. No. 94

(Passed March 14, 1963. In effect July 1, 1963)

#### **STATE RETIREMENT SYSTEM**

**An Act Establishing a State Retirement Office and Retirement Board; Providing for the Administration of Public Retirement Systems, Funds, and Functions; Setting Forth the Duties, Responsibilities and Powers of the Board; Providing for the Payment of Administrative Costs; Creating the Utah State Retirement Fund; Providing for the Preparation of a Uniform Retirement Statute Covering Retirement Systems Assigned for Administration to the State Retirement Office; Providing an Effective Date.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Purpose—Central Administration.**

The purpose of this act is to provide for a central administrative office

and retirement board to consolidate the administration of the various Utah public employee retirement systems to which the state of Utah makes contribution.

### **Section 2. Creating State Retirement Office.**

A state retirement office is hereby created to administer the state retirement systems and to perform such other functions as are assigned to it by legislative enactment. This office shall be known as "The Utah State Retirement Office." Any reference made to "retirement office" in this act shall be considered as referring to the Utah State Retirement Office.

The retirement office shall be an independent state agency and not a division within any other department. It shall be subject to the usual legislative and executive department controls. The retirement office shall be housed at the State Capitol.

### **Section 3. Retirement Board to Direct Office—Terms—Appointment.**

The retirement office shall be administered under the general direction of a retirement board of seven members, six of whom shall be appointed by the governor on a non-partisan basis, with the approval of the Senate. The seventh member of the board shall be the state treasurer who shall serve as an ex-officio member with full voting privileges. The board shall be known as "The Utah State Retirement Board." All references made in this act to the "board" or to the "retirement board" shall be deemed to refer to the Utah State Retirement Board. Three appointments shall be made to the board from lists of recommended candidates submitted by public employee and employer organizations, providing that two appointments shall be school employees and one appointment shall be a public employee not engaged in school service. Three members shall be appointed from the public as public representatives, one of whom shall be experienced in investments and one experienced in banking. Terms of office shall be for six years, one term expiring each year. A quorum to do business shall be four members. Public employees on the board who retire or who terminate their covered employment shall be deemed to have resigned from the board.

Initially, to provide for a continuity of administration, the retirement board shall consist of the members of the Utah Public Employees' and the Utah School Employees' Retirement Boards, until their individual current terms of office expire, at which time the governor shall make the appointment required for the appropriate term of office. Members of the board shall serve until their successors have been appointed and qualified. Each member shall qualify by taking the constitutional oath of office. Persons appointed to the board by the Governor, between sessions of the legislature, shall serve with full authority until such appointments have been acted upon by the Senate. The Governor in his initial appointments may make appointments for less than six years, depending upon the vacancy to be filled, so as to provide for the expiration of appointments on a uniform annual basis.

The retirement board shall elect annually a president and vice president from the membership of the board. Members of the board shall be reim-

bursed for expenses incurred as members of the board. Members appointed to the board shall receive in addition to expenses \$15.00 per diem for attending regularly called meetings of the board. The total per diem payments to a board member shall not exceed \$180 per year.

#### **Section 4. Retirement Board to Appoint an Executive Director.**

The retirement board shall appoint an executive director who shall serve at the pleasure of the board to administer the retirement office. Upon the recommendation of the director, the board shall employ such other personnel or consultants as is deemed necessary to administer the retirement systems assigned to the retirement office for administration. Such personnel may include actuaries, attorneys, medical examiners, investment counselors, accountants and such clerical and other assistants as may be necessary to accomplish the purpose of the retirement office. Compensation of the director shall be established by the board.

#### **Section 5. Director to Serve as Secretary of Board.**

The director shall serve as secretary of the board and shall call meetings of the board with the approval of the president. The director shall serve as the executive officer of the board and shall administer any and all retirement programs or other programs assigned to the board by the legislature. Acts of the director shall be currently reported to the board and shall be subject to review, modification or reversal by the board at its next meeting. Modification or reversal by the board of any act of said director shall be effective on the date fixed by the board, but no benefit payments made prior to the board's action shall be affected thereby except for such recovery from the recipient beneficiary as the board may expressly direct. The board shall sit as a board of appeal on any questions referred to it by the director or on any appeals filed by a member of a system in regards to a ruling of said director.

#### **Section 6. Director to Be Bonded.**

The director shall be bonded, together with other staff members in key positions, in such amounts as are prescribed by the finance commission.

#### **Section 7. Retirement Board—Powers—Authority.**

The retirement board may exercise all the duties and responsibilities which are or may be assigned to it by the legislature in the administration of any retirement system or fund or responsibility. The board is granted broad authority and power in performing its policy making functions.

#### **Section 8. Board to Administer Retirement Systems.**

The board, in the administration of the various retirement systems assigned to it, is specifically empowered and authorized to approve and make the transfer of service credits, together with related member and employer contributions, from one retirement system to another upon such a basis and with such conditions as the board deems in the mutual interest of the public and the member. The board is authorized to rule that transfer of employment from a position covered by one Utah public

retirement system to a position covered by another system does not constitute a termination of employment.

**Section 9. Board May Establish Membership Council.**

The board may establish a membership council or councils to advise and counsel with the board and the director on policies affecting members of the various systems administered by the retirement office. The board may pay the travel expenses of members who attend such council meetings as are called.

**Section 10. Utah State Retirement Fund Created.**

There is hereby created for the purpose of enlarging the investment base and simplifying investment procedures and functions a common trust fund to be known as the "Utah State Retirement Fund." The retirement board may commingle and pool the funds and investments of any and all retirement systems assigned to it to administer in the Utah State Retirement Fund, providing that the principal amounts of the participating funds shall not lose their individual identity but shall be maintained as separate trust funds on the books of the retirement office. In combining the investments of any or all funds, each of the participating funds shall be credited initially with its share of the total assets transferred to the Utah State Retirement Fund, the calculation being made on the basis of the book value of the various investments at the time such investments are credited to the common fund. Subsequent transfers of additional capital from participating funds shall be credited similarly to its respective trust account. Funds may be withdrawn or transferred out of the Utah State Retirement Fund and credited back to a participating fund, but at no time shall the income or principal or equity credit belonging to one participating fund be transferred to another or appropriated for any purpose other than that permitted by this act or the acts covering the individual participating funds.

Interest and other earnings shall be credited to each participating fund on a pro rata basis monthly, or as the board shall direct. A portion of the interest and other earnings of the common trust fund may be credited to a reserve account within the Utah State Retirement Fund to meet adverse experiences arising from investments or other contingencies. Each participating fund shall retain its proportionate equity in said reserve account.

Nothing in this section shall be interpreted to prohibit the commingling and pooling of retirement funds from more than one retirement system to purchase one or more investments. Such investments may be registered and held in the name of the Utah State Retirement Fund.

**Section 11. The Retirement Board Shall Administer and Invest Funds.**

The retirement board shall have control of the administration of any and all funds assigned to the retirement board or retirement office for administration. The board shall determine the method of investing the funds to insure the greatest return commensurate with sound financing adequately safeguarded. The board may invest and reinvest the money in the retirement fund or funds and may provide for the holding, purchasing, selling, assigning, transferring and disposing of any of the

securities and investments in which any of the money of the fund or funds is invested. The state treasurer shall serve without charge as custodian of the fund or funds.

**Section 2. Retirement Board not Subject to Control of Board of Examiners.**

The retirement board may invest any and all funds assigned to it in accordance with investments approved for investment of Utah School Employees' Retirement funds or Utah Public Employees' Retirement funds. Investments shall not be subject to the control of the Board of Examiners.

**Section 13. Retirement Board to Administer Funds.**

The retirement board shall have power to pay all administrative expenses of the retirement office from the interest earnings or the retirement funds assigned to the board for administration, except as the legislature might otherwise direct. Costs of administration shall be prorated to the various retirement or other programs assigned to the retirement office for administration. In the event that a retirement system which has no assets or reserve funds is assigned to the retirement office for administration, the retirement board may make and collect a membership assessment to pay any and all costs incident to the administration of the particular system. The administrative budget of the retirement office shall be approved annually by the governor and thereafter may be expended as the board may direct.

**Section 14. Merit System to Cover All Full-Time Employees.**

The board shall provide for a merit system under the direction of the Utah Merit System Council or its successor covering all full-time employees of the retirement office, excepting the executive director, classifying and fixing the minimum standards for such personnel, and under the direction of the Utah Merit System Council and pursuant to the regulations of said merit system shall provide for the holding of examinations to determine the technical and professional qualifications of applicants for positions with the retirement office. The board shall provide for annual merit ratings of all employees to ascertain whether or not said employees, or any of them, are maintaining the eligibility standards prescribed by the board. The board shall pay its proportionate share of the services rendered to it by the Utah Merit System Council.

All employees, who on the effective date of this act have served satisfactorily and continuously for a period of one year or more in an administrative or clerical capacity as employees of a Utah state retirement board, shall be deemed fully qualified employees under the merit system upon certification of satisfactory service by the board.

**Section 15. Employees Covered Under Utah School Employees Retirement System.**

Employees of the board shall be deemed members of the Utah School Employees' Retirement System for the purpose of retirement coverage and shall make the contributions required by the act. The board shall make the required employers' contributions. As of July 1, 1963 all em-

ployees of both the Utah School Employees' Retirement and the Utah Public Employees' Retirement Boards, respectively, who are employed in the Utah State Retirement Office and who have had at least two years of service in the employ of either or both of the aforesaid retirement boards shall be granted credit for all Utah Public service rendered prior to July 1, 1961, providing that credit for such service has not been forfeited by a withdrawal of contributions and a subsequent failure to re-deposit said funds upon return to service. Adjustments for contributions made and credit for service rendered between July 1, 1961 and June 30, 1963 shall be made between the two systems so as to preserve and protect the service credit benefits of said employees. Upon termination of service, an employee of the board shall be deemed eligible for retirement benefits, providing the employee qualifies as to age and service, under either, but not both, the Utah School Employees' Retirement System or the Utah Public Employees' Retirement system benefit formulas, whichever the employee requests. Benefit payments shall be made by the Utah School Employees' Retirement System.

#### **Section 16. Uniform System for All Retirement Systems.**

It is hereby declared to be the intention and desire of the legislature to develop a uniform system of records, administrative procedures and regulations embracing all state retirement systems.

The director shall develop common administrative procedures and regulations, with the approval of the board, to be made applicable to the extent that they are not in conflict with statutory requirements, to each of the retirement systems assigned to the retirement office to administer.

The director may, with the approval of the board, establish independent records for each of the retirement systems or combine the records into one, utilizing accepted principles of fund accounting to identify the assets and vested interests of the separate retirement systems.

#### **Section 17. Retirement Board to Prepare Retirement Statute.**

The legislature, as part of this act, directs the retirement board to prepare for the consideration of the 1965 session of the legislature a proposed retirement statute embracing all state retirement systems assigned by the 1963 session of the legislature to the retirement office to administer. Such proposed legislation shall maintain each system as a separate entity, unless otherwise directed, but inasfar as practical, all administrative regulations, as well as investment provisions and procedures, of the various retirement acts shall be made uniform.

#### **Section 18. This Act to Take Precedence Over Other Acts.**

Should a conflict, discrepancy or inconsistency appear between this act and the statutory language relating or incident to any retirement system or funds assigned to the board to administer, this act as far as practicable shall take predominance.

#### **Section 19. Severability Clause.**

If any provision of this act, or the application of any provision to any

person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

**Section 20. Effective Date.**

This act shall take effect July 1, 1963.

Approved March 21, 1963.

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**CHAPTER 75**

H. B. No. 64

(Passed March 14, 1963. In effect March 18, 1963)

**PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**An Act Amending Sections 49-1-34 and 49-1-36, Utah Code Annotated 1953, as Enacted by Chapter 100, Laws of Utah 1961; Enacting Sections 49-1-52.5, 49-1-52.6 and 49-1-52.7, Utah Code Annotated 1953; and Amending Sections 49-1-62, 49-1-63 and 49-1-70, Utah Code Annotated 1953, as Enacted by Chapter 100, Laws of Utah 1961, Relating to the Utah Public Employees' Retirement Act, for the Purpose of Clarifying the Definitions of Certain Words and Phrases Used in the Act; Requiring the Determination of Social Security Status for Employing Units Prior to Coverage Under the System; Permitting Elected and Appointed Public Officials to Increase Their Contributions to the Retirement Fund, if Such Contributions are Matched by Their Employers, for the Purpose of Increasing Their Retirement Benefits; Establishing a Supplementary Retirement Pension for Legislators; and Providing an Appropriation Modifying the Post-Retirement Employment Provisions of the Act; Modifying the Provisions Covering the Cancellation of Retirement and the Re-Retirement of a Member; Modifying the Death Benefit for Members Entering System at and After Age 65; Providing a Reduced Allowance for the Spouse of a Member Who has 20 or More Years of Service, is Age 65 or Older and has not Retired at Time of Death; Permitting the Retirement Board, Upon Request, to Make Deductions from Retirement Allowances to Pay Health Insurance Premiums; and the Effective Date.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 49-1-34, Utah Code Annotated 1953, as enacted by Chapter 100, Laws of Utah 1961, is amended to read:

**49-1-34. Definitions.**

Unless a different meaning is plainly required.

(1) "Retirement system," or "system" shall mean the Utah public employees' retirement system created by this act.

(2) "Department" means any department, office, board, commission, instrumentality or other agency of the state of Utah.

(3) "Political subdivision" means any political subdivision of the state, including but not limited to cities, towns, counties, leagues or associations thereof or associations of Utah public employees, but only if such subdivision is a juristic entity which is legally separate and distinct

from the state and only if its employees are not by virtue of their relations to such entity employees of the state or one of its departments. The term shall include special district or authorities created by the legislature or by local governments, such as, but not limited to, mosquito abatement districts, sewer or water districts, water associations and libraries.

(4) "Employer" or "employing unit" shall mean any department or political subdivision for whom any employee or member performs services subject to the provisions of this act.

(5) "Employee" shall mean a regular full time employee who performs covered services for one or more employers. It shall mean, also, an officer, elective or appointive including constables, but excluding any members of the Utah Legislature if he should choose to be excluded, who receives as compensation from an employer \$30.00 or more per month. An Appointive officer shall mean a person appointed to a position for a definite and fixed term of office by official and duly recorded action of the governing body of a covered unit.

(6) "Regular full time employee" shall mean an employee whose employment normally requires 30 hours or more per week for a minimum period of three consecutive months, or a person employed in a position requiring 20 hours or more per week for a minimum period of ten consecutive months except as may be modified by the board. Full-time students and persons employed in a trainee relationship may be excluded from coverage by regulation of the board.

(7) "Service" or "covered service" shall mean service rendered to an employer for compensation which is included in computations relating to membership status or benefit rights under this act. The term shall not include services rendered by an employee which are included in retirement computations relating to benefit rights under the provisions of other retirement annuity or pension systems to which the state of Utah or its political subdivisions have made, or are required to make, contributions on behalf of any employee other than the terminated retirement system, the Social Security Act, pension systems which provide only hospitalization and surgical benefits and term life insurance benefits to retired employees and retirement systems of employing units which are so integrated into this retirement system as to avoid duplication of benefits based upon the same services.

(8) "Terminated retirement system" or "terminated system" shall mean the system created by chapter 1 of Title 49, Utah Code Annotated 1953, as amended, the functions, assets and benefits of which are integrated into this retirement system by other provisions of this act.

(9) "Current service" shall mean covered services performed for an employer on or after July 1, 1961.

(10) "Prior service" shall mean covered service performed for a department or political subdivision prior to July 1, 1961.

(11) "Years of service" or "service years" shall mean the number of periods each to consist of twelve full months, or as determined by the board, whether consecutive or not, during which an employee performed services for an employer or employers, including such time as the employee was absent on a paid leave of absence granted by an employer or absent in the service of the United States government on mili-



tary duty as hereinafter provided. Members shall be credited with any fractions of years of service to which they may be entitled.

(12) "Compensation," "salary" or "wages" shall mean the total amount of payments made by an employer to an employee for services rendered to the employer, including but not by way of limitation, all salary, wage and overtime payments, but excluding the monetary value of remuneration paid in kind, such as residence or use of equipment and all contributions made by an employer under this plan or under any other employee benefit plan maintained by an employer for the benefit of a participant.

"Compensation," "salary" or "wages" as used in this act shall be limited to a maximum amount of \$500.00 per month.

(13) "Average monthly compensation" shall mean the average monthly compensation earned by a member in each month during which he performed services on and after July 1, 1961 up to the date of retirement.

A member absent on military leave may include all or part of the time spent in military service at the rate of compensation he was receiving when he terminated his employment to enter military service.

(14) "Prior service compensation" shall mean the normal monthly salary or wages earnable, excluding overtime or special pay, by a member in the department or political subdivision in which he was employed during the month of October, 1960. In the event he was not employed during said month, "Prior service compensation" shall mean the normal monthly salary or wage earnable by him, excluding overtime or special pay, in a department or political subdivision in which he was employed during the three consecutive months period nearest to October 1960.

(15) "Board" or "retirement board" shall mean the retirement board provided for herein.

(16) "Member" or "participant" shall mean an employee of an employer who is eligible to be and becomes a participant of the retirement system as provided herein.

(17) "Retirement fund" or "fund" shall mean the Utah public employees' retirement fund provided for herein.

(18) "Beneficiary" shall mean any person entitled to receive a retirement benefit or any other benefit provided herein.

(19) "Contributions" shall mean the contributions by both the employing units and the members into the retirement fund.

(20) "Age" shall mean the number of full years or fractions of years that have elapsed between the date of birth and the date as of which age is being determined. For the purpose of calculating benefits, age shall be computed to the preceding complete quarter year of age.

(21) "Normal retirement age" shall mean the attained age of 65 years.

(22) "Disability" shall mean the total and permanent incapacity of a member to perform the usual duties of his employment with an employer. Such incapacity shall be deemed to exist when a physician or a board of physicians appointed by the board certify that upon the best medical information such disability will be of an extended and indefinite duration.

(23) "Regular interest" shall mean interest compounded annually

at such rate as shall have been adopted from time to time by the retirement board.

(24) "Accumulated contributions" shall mean the sum of all contributions made by a member and credited to his account in the fund, together with regular interest thereon.

(25) "Retirant" shall mean a retired member who is receiving retirement benefits.

(26) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.

(27) "Effective date" shall mean 12:01 a.m. July 1, 1961.

### **Section 2. Section Amended.**

Section 49-1-36, Utah Code Annotated 1953, as enacted by Chapter 100, Laws of Utah 1961, is amended to read:

#### **49-1-36. Employing Units Required to Participate — Duties.**

All employing units in existence on or which may come into existence after the effective date of this act, which engage employees to perform covered services, shall become participants in the retirement system, except as limited herewith, and shall pay or provide for the payment of all contributions, maintain all records, provide all reports and information, and perform all functions that are required thereby and by the board. Employing units shall become participants in the system effective the day following (a) the extension of social security coverage to said employing unit, (b) the denial of such coverage by the social security director, or (c) the election of the employing unit by action of its governing body not to seek such social security coverage.

### **Section 3. Section Enacted.**

Section 49-1-52.5, Utah Code Annotated 1953, is enacted to read:

#### **49-1-52.5. Elected or Appointed Official May Contribute.**

An elected or appointed official may contribute up to twenty dollars per month from his compensation to the retirement fund, providing the employer will match such contributions. Any official choosing to contribute in excess of his required contribution shall file with the board a statement of intention, approved by his employer who will certify to the board that said employer will contribute an amount equal to the official's contribution to the retirement fund.

Upon applying for retirement an official who has participated in this program as set forth in the paragraph immediately preceding shall receive a monthly current service pension equal to one/forty-eighth of his total contributions, excluding interest.

### **Section 4. Sections Enacted.**

Sections 49-1-52.6 and 49-1-52.7, Utah Code Annotated 1953, are enacted to read:

#### **49-1-52.6. Additional Retirement Benefit.**

In addition to the retirement benefit provided by Section 49-1-57 of the Utah Public Employees' Retirement Act, enacted by Chapter 100, Laws of Utah 1961, a pension shall be paid to a retired member who has credit for two or more years of service in the Utah Legislature, which

shall bring that part of the retired member's allowance which is based on such service up to an amount equal to \$5.00 per month for each year of service in the Utah Legislature. If the member retired before age 65 the aforesaid pension benefit shall be reduced to an amount which is the actuarial equivalent, at the actual age of retirement, of the normal special retirement pension provided at age 65 or over. This special pension shall be deemed to be and shall be treated as an integral part of the retiring member's normal retirement allowance.

#### **49-1-52.7. Appropriation to Retirement Fund.**

There is hereby appropriated from the general fund of the state of Utah to the Utah Public Employees' Retirement Fund the sum of \$25,000 for the purpose of defraying the cost of the pension provided by Section 49-1-52.6, Utah Code Annotated 1953, as amended, during 1963. Annually thereafter, the Utah Public Employees' Retirement Board or its successor shall certify to the Utah State Treasurer the sum deemed necessary to pay the cost of the pensions authorized in Section 49-1-52.6 during the forthcoming year, plus any liability arising from the immediate past year. The State Treasurer is authorized and is hereby directed to pay the Utah Public Employees' Retirement Fund the sum so certified, providing that in no one year may such a sum exceed \$50,000.

#### **Section 5. Section Amended.**

Section 49-1-62, Utah Code Annotated 1953, as enacted by Chapter 100, Laws of Utah 1961, is amended to read:

#### **49-1-62. Post Retirement Service—Reduction in Retirement Allowance—Notice to Board—Reinstatement to Active Membership.**

In the event a retired member is elected or appointed or employed to perform covered services within ninety days after retirement, his retirement allowance shall be suspended as of the beginning of the month in which the retirant begins rendering service for a covered unit. After ninety days from retirement, a retirant may be employed from time to time but not to exceed sixty days during a 12-month period, if work is performed on a per diem basis, or three months during a 12-month period, if work is performed on a monthly basis, for an employer covered by this system. Should a retirant work in excess of the aforesaid limitations and his gross monthly compensation for such work exceeds 20% of his average monthly compensation as it was at the time of his retirement, his retirement allowance shall be suspended until he discontinues such covered employment.

The effective day of such a suspension of an allowance shall be set by the board.

The retirant shall immediately notify the retirement board in writing of his acceptance of appointment, election or employment in a covered position which may exceed a two months period.

During such period of post-retirement employment neither the time of service nor the compensation received shall affect his future benefit status but shall require contributions by both the retired member and his employing unit. Contributions made by the retired member shall be credited to an account to be held in his name and, together with any

interest earnings approved by the board, may be paid as a special death benefit to his beneficiary or beneficiaries upon the death of the retired member, or refunded to the retirant under such regulations as the board may adopt. Contributions made by the employing unit shall be credited to the employers' contribution account in the retirement fund.

(a) If the retirant, however, has been on retirement a minimum of one year, he may at his option request the retirement board to cancel his retirement and reinstate him to active membership status. Such cancellation of retirement and reinstatement to service, if approved by the board, shall be effective on the first day of the month following the date the formal notification is received by the retirement board at its office in Salt Lake City or upon a date specified by the board. A reinstated member shall be credited with the service credits standing to his account at the time of retirement and henceforth shall be treated as a member of the system. Upon reinstatement the member's individual account shall be credited with an amount which shall be the actuarial equivalent, at the time of such re-entry, based upon a service retired life, of his annuity, but such amount shall not exceed the amount of his accumulated contributions as they were at the time of his retirement. If such a reinstatement member retires again within one year of his reinstatement, he shall have his retirement benefit calculated using the same factors used previously, except for additional service which may have been rendered.

#### **Section 6. Section Amended.**

Section 49-1-63, Utah Code Annotated 1953, as enacted by Chapter 100, Laws of Utah 1961, is amended to read:

#### **49-1-63. Payment of Death Benefits.**

Upon receipt of proper proof of the death of a member before the effective date of his retirement the following death benefits shall be paid to his estate or to such person or persons having an insurable interest in his life as he shall have nominated by written designation duly filed with the retirement board, based upon the below stated circumstances relating to his death:

(a) If the death of such member occurs either within a 120 day period after the last day of service for which said member received compensation or while he is still physically or mentally incapacitated for the performance of his duties continuously from the last day of service for which said member received compensation, his death benefit, except as provided in paragraph (b) immediately following, shall be an amount equal to the total of the accumulated contributions of the deceased member, plus \$500.00, except as follows: The beneficiary of a person who entered the system at age 65 or older, and died before retirement, shall receive the total of the deceased member's contributicns, or \$500.00, whichever is greater.

(b) A member age 65 or over with 20 or more years of credited service who dies under such circumstances as to entitle said member's spouse to the death benefits prescribed by Section 49-1-63 (a) of this act, upon the request of the said spouse, shall be deemed to have retired on the first day of the month following the month in which death occurred and to have been retired under Option 3 wherein said spouse shall be

paid such monthly benefits throughout the remainder of his or her life as are prescribed by Option 3. Benefits payable under this paragraph shall be deemed to be service retirement benefits. The retirement board is hereby authorized to make this paragraph effective retroactively to July 1, 1961 and to make whatever adjustments it deems equitable in fulfilling the purpose of this paragraph just as though said paragraph had been in effect since July 1, 1961.

(c) If the member died more than 120 days after his last date of covered service and such interval of inactivity as a member is not the result of physical or mental incapacity, which caused his termination of service, the death benefit shall be an incapacity, which caused his termination of service, the death benefit shall be an amount equal to the accumulated contributions of the deceased member.

A member or his beneficiary, after death of the member, may elect by a written document filed with the board to have the death benefit paid in monthly installments fixed in number or amount but not involving life contingencies subject to such rules as the board may adopt. Regular interest may be credited on the unpaid balance of such benefit.

#### **Section 7. Section Amended.**

Section 49-1-70, Utah Code Annotated 1953, as enacted by Chapter 100, Laws of Utah 1961, is amended to read:

#### **49-1-70. Nonassignability — Exemption from Legal Process.**

The right of any member or his beneficiary to any benefit or payment hereunder or to the return of any contribution hereto or any other right accrued or accruing to any person under the provisions of this act and the assets of the fund created hereby shall not be subject to alienation or assignment by the member and shall not be subject to attachment, execution, garnishment or any other legal or equitable process.

This section shall not be construed to prohibit the board's deducting such medical or other insurance premiums from a retirant's allowance as said retirant shall request providing that such requests are within such limitations and regulations as may be prescribed by the board.

#### **Section 8. Emergency Clause.**

This act becomes effective upon approval.

Approved March 18, 1963.

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## **CHAPTER 76**

S. B. No. 95

(Passed March 14, 1963. In effect July 1, 1963)

### **TRANSFER OF PUBLIC EMPLOYEES' RETIREMENT**

**An Act Amending Section 49-1-40, Utah Code Annotated 1953, as Enacted by Chapter 100, Laws of Utah 1961, Relating to the Utah Public Employees' Retirement Act; Providing for Transferring the Administration of the Utah Public Employees' Retirement System and the Utah Public Employees' Retirement Fund From the Utah Public Employees' Retirement Board to the Utah State Retirement**

**Board Created by S. B. No. 94, Laws of Utah 1963; Providing an Effective Date.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 49-1-40, Utah Code Annotated 1953, as enacted by Chapter 100, Laws of Utah 1961, is amended to read:

**49-1-40. Utah State Retirement Board — Powers — Duties.**

The retirement system shall be administered under the direction of the Utah State Retirement Board. Any and all references made in this act to a retirement board, or to the Utah Public Employees' retirement board, or an obvious variation thereof, shall be deemed to have been made to the Utah State Retirement Board created by S.B. 94, Laws of Utah 1963.

The Utah state retirement board shall be the successor to and have all the powers, duties and responsibilities of the Utah public employees' retirement board heretofore in existence for the purpose of administering the Utah public employees' retirement system and the Utah public employees' retirement fund in conformance with the Utah public employees' retirement act or as otherwise provided or authorized by S. B. No. 94, Laws of Utah 1963.

The board shall meet at least once every three months.

**Section 2. Effective Date.**

This amendment shall take effect July 1, 1963.

Approved March 21, 1963.

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**CHAPTER 77**

S. B. No. 97

(Passed March 14, 1963. In effect May 14, 1963)

**PRISON AND INDUSTRIAL SCHOOL PENSION**

**An Act Repealing Chapter 4, Title 49, Utah Code Annotated 1953, Relating to the Prison Guards and Industrial School Employees' Pension System; Providing for the Termination of Said System; Providing for the Continued Payment of Benefits to Persons Retired Thereunder and the Protection of Accrued Service Credits for Employees; Providing for the Continued Financing of the System Until all Liabilities are Liquidated; Providing for the Administration of the Act.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Chapter Repealed.**

Subject to the other provisions of this act, Chapter 4, Title 49, Utah Code Annotated 1953, is repealed effective midnight June 30, 1963.

**Section 2. Termination of Prison Guards and Industrial School Employees' Pension System.**

The purpose of this act is to terminate the Prison Guards and Industrial School Employees' Pension System that is in existence in order

that employees of the state prison, the adult probation and parole department and the board of corrections may qualify for and obtain the benefits or the Utah public employees' retirement system. It is the intention of the legislature that this purpose be accomplished without depriving any person who has retired or is eligible to retire under the provisions of the repealed act of any rights or benefits to which he may be entitled thereunder as of the effective date of this act. It is further contemplated that employees of the state governmental units cited above who have not retired but who have qualified for retirement benefits or have accumulated service credits towards retirement benefits before the repeal of this act shall continue to be eligible for such benefits, except as modified hereafter, and shall receive said benefits upon application, with the same frequency and under the same conditions as though the prison guards and industrial school employees' pension system had not been terminated.

### **Section 3. Retired Person's Benefits to Continue.**

Any person who prior to the repeal and termination date has retired and is receiving or is qualified to receive an allowance or pension from the prison guards and industrial school employees' pension system shall continue to receive or be qualified to receive said pension as provided by the act in the same amount with the same frequency and under the same conditions as though the chapter had not been repealed and the pension system had not been terminated, except as provided by Section 7.

### **Section 4. Benefits not Creditable in Pension System.**

In no event shall any service performed by members of the pension system after the repeal and termination be creditable in the pension system to the person covered by the terminated system.

### **Section 5. Disability Benefits.**

Any person with 15 or more years of service credit under the repealed pension system at the time of the repeal, unless such service credit is subsequently forfeited as set forth by Section 7, who is disabled under conditions which qualify for disability retirement under the Utah public employees' retirement act, shall be eligible for and shall receive the pension provided in such circumstances under the provisions of the terminated pension act just as though the prison guards and industrial school pension system had not been terminated, less the retirement allowance benefits to which he may be eligible under the Utah public employees' retirement act. In such cases, the benefit payments made under the termination provisions of this act, or the Utah public employees' retirement act, shall not be deemed to represent or constitute a duplication of benefits based upon the same public service as prohibited by Section 49-1-34 (7).

### **Section 6. Termination Benefits — Upon Retirement.**

Any person or persons with one or more years of service credit under the repealed pension system at the time of repeal, who is credited with such an amount of service in the Utah public employees' retirement system at the time of retirement so that his total service credits in the two systems equals 15 or more years of service, excluding duplication of

service credits based upon the same years of service, shall be eligible for and shall receive at age 60 or thereafter a pension from the terminated system of \$100 per month, less the retirement allowance payable at the time of retirement by the Utah public employees' retirement act. In such cases, the benefit payments made under the termination provisions of this act, or the Utah public employees' retirement act, shall not be deemed to represent or constitute a duplication of benefits based upon the same public service as prohibited by section 49-1-34 (7).

**Section 7. Withdrawal of Funds — Forfeit Benefits.**

The withdrawal of funds contributed to the Utah public employee's retirement system by a member having service credits in the terminated Utah prison guards and industrial school employees' pension system shall forfeit such service credits and make the member ineligible to apply for or draw a benefit from the Utah prison guards and industrial school employees' pension system.

**Section 8. Pension Payments to Continue Until Liabilities Are Liquidated.**

Pension payments to be made by the terminated pension system shall continue to be requisitioned in the same manner as provided by section 49-4-2 of the repealed act, until all pension liabilities are liquidated.

**Section 9. Powers to Administer Act.**

This act shall be administered by the Utah state retirement board created by S. B. No. 94, Laws of Utah 1963, which is hereby granted all the necessary authority and power to implement and administer this act. The respective employing units covered by this act shall pay and continue to make payment of the pension benefits due from the unit to a retired employee, upon proper certification by the board.

Approved March 21, 1963.

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**CHAPTER 78**

S. B. No. 30

(Passed March 12, 1963. In effect May 14, 1963)

**FIREMEN'S PENSION BILL**

**An Act Amending Sections 49-6-4, 49-6-7 and 49-6-8, Utah Code Annotated 1953, as Amended by Chapter 83, Laws of Utah 1955, as Amended by Chapter 73, Laws of Utah, 1959, Providing that all Paid Firemen Meeting the Requirements of the Act May Retire and Receive a Pension Equal to One-Half the Average Actual Monthly Wage of Such Firemen for One Year Next Prior to his Retirement; Upon the Death of any Paid Fireman the Widow of such Deceased Fireman Shall Receive a Monthly Pension of 37½ Per Cent of the Average Monthly Wage of Said Fireman; a Widow of a Retired Pensioned Fireman Shall Receive Three-Fourths of the Pension of Her Deceased Husband; the Pension of a Widow Shall Cease Only Upon the Death of the Widow.**

*Be it enacted by the Legislature of the State of Utah:*



**Section 1. Sections Amended.**

Sections 49-6-4, 49-6-7 and 49-6-8, Utah Code Annotated 1953, as amended by Chapter 83, Laws of Utah 1955, as amended, by Chapter 73, Laws of Utah 1959, are amended to read:

**49-6-4. Pension — Volunteer Fireman — Scale of Payments — How Computed — Payments Under Workmen Compensation Act — Suspension Payments — Application — Notice — Hearing by Commission of Finance — Physical Examination — Service with Armed Services — Dependents — Right to Receive Payments — Appeals.**

Any paid fireman coming within the following requirements may retire or may be retired from active service and receive a monthly service pension equal to one-half of the average actual monthly wage of such fireman for one year next prior to his retirement, as follows:

- (1) Any paid fireman who has performed 20 years active service and who is of the age of 55 years or more.
- (2) Any paid fireman who has performed 25 years active service, and is of the age of 50 years or more.
- (3) Any paid fireman who has performed not less than 20 years of active service and who is suffering from a physical or mental disability which totally incapacitates him for active service as such fireman.

Any volunteer fireman or paid fireman not coming within the requirements of the foregoing subparagraphs (1), (2), and (3), who is suffering from a mental or physical disability, resulting from accident, injury, or exposure occurring while in the performance of his duties as such fireman which renders him unfit for active duty, shall be retired, and when so retired shall be paid a monthly disability pension computed as follows:

(a) For paid firemen, a percentage hereinafter set forth multiplied by one-half of the average monthly wage which they received in the year next prior to the happening of the event causing their disability, and (b) for volunteer firemen a percentage hereafter set forth multiplied by one-half of the salary received by the lowest salaried full-time fireman of a third class city in the state of Utah. The said percentages shall be the degree of loss of function of any such paid or volunteer fireman, which loss of function shall be determined and rated within a range from 25% to 100% disability graduated in 5% increments. No disability under 25% shall be compensable under this act.

After five years of active service any paid fireman suffering from a mental or physical disability not the result of accident, injury, or exposure occurring while in the performance of the duties as such paid fireman which renders him unfit for active duty, shall be retired and when so retired shall be paid a monthly disability pension equal to one-half of the monthly disability pension provided to be paid under the provisions of this section where such mental or physical disability is the result of accident, injury, or exposure occurring while in the performance of his duties as such paid fireman.

Payment of all pensions and benefits as in this chapter provided for shall begin only after the period has ended for which compensation payments may be and are made under the provisions of the workmen's

compensation act. Should the disability for which any such pension is awarded continue until the recipient thereof has reached the age of 55 years, such disability thereafter shall be deemed to be fixed and shall not be subject to amendment or termination or redetermination by the commission of finance. If the disability for which a disability pension has been awarded and paid, as in this chapter provided for, shall cease, the further payment of such pension shall cease and terminate, and the recipient of such pension shall be reinstated in the employment from which he was previously retired at the rank he held at the time of his said retirement.

Any pension, as in this chapter provided for, shall be allowed only upon written application therefor filed by the person or persons entitled thereto, or a personal representative thereunto duly authorized, with the commission of finance in such form as said commission may prescribe. At least 10 days prior to the filing of his application, any paid or volunteer fireman shall serve written notice of his intention to file his application with the clerk or recorder and the fire chief or other head of the fire department of the city, town or county of which he is an employee. Upon receipt of such notice, the fire chief or other head of such fire department shall forthwith transmit to such commission copies of all medical reports or other records relative to the accident or exposure resulting in the injury for which such fireman claims disability as well as records of the age and length of service of such fireman, and any and all other records of the fire department, of which he is the head, relevant to such fireman's claim to such pension. Also, upon receipt of such notice of intention, such clerk or recorder shall transmit forthwith certified copies of any and all similar records on file in his office to the commissioner of finance.

Within 30 days of the receipt of such application, the commission of finance shall hold a hearing upon said application whereat anyone having knowledge or information of any factual matters relating to the subject matter of such application may present the same to said commission. In conducting said hearing, said commission shall not be bound by the technical rules of procedure or evidence obtaining in the courts of law or equity in this state, but shall proceed in a manner that shall be deemed most likely to reveal all necessary facts and to carry out the intent and purpose of this act.

All such hearings shall be open to the public and notice thereof shall be given by mail addressed and sent to the applicant, to the secretary of the Utah State Firemen's Association and to the chief of the fire department in which he was employed, not more than 20 days nor less than 10 days in advance of such hearing. Upon application of the claimant or said secretary or any other duly authorized officer of said firemen's association, a reasonable continuance for the hearing of such application shall be granted.

On or before 30 days after the hearing of such application, the commission of finance shall determine whether the applicant is entitled to a pension as in this chapter provided for, and preserve in its office a written record thereof, together with the finding of fact and conclusions upon which such determination is based.

If its determination be that such applicant is entitled to a pension,

such pension shall forthwith be awarded to him payment thereof made beginning as of the date of the termination of his employment.

If the application be for a disability pension as in this chapter provided for, the commission shall, upon receipt of such application, forthwith cause the applicant to be examined by an impartial physician other than the physician attending said applicant for injuries upon which said application is based, and shall cause a written report of such examination to be filed in its office with said application and other records relative thereto, and shall consider such report in connection with its determination of said applicant's claim to a pension.

If the applicant for a pension, as in this chapter provided for, left his employment as a paid or volunteer fireman, by enlistment, draft, or recall during war or declared national emergency to enter into service with the armed forces of the United States government and thereafter, after being first eligible for discharge or release from said armed forces, refrains from any further enlistment or service with said armed forces and resumes his employment as a fireman with his former employer, within 90 days after discharge, the time that he was with such armed forces shall be deemed active service of such applicant in determining his length of service as such fireman and his eligibility for a pension, provided, however, that such discharge must be on conditions other than dishonorable.

Should the recipient of any pension awarded under the provisions of this chapter be confined in any institution as punishment for a commission of a felony or because of mental incompetency or be deemed by the commission of finance to have deserted his dependent, the commission of finance may make the payment of any pension awarded to him, direct to said recipient's dependents or to such other person as it may deem admissible for the use and benefit of such dependents.

Any person aggrieved by an order or award of the commission may have such order reviewed by the supreme court. Such review shall be taken in the same manner and be subject to the same limitations as prescribed for review of the orders of the industrial commission.

#### **49-6-7. Death Benefits — Dying after Five Years of Service — Widow and Dependent Minor Children.**

Upon the death of any paid fireman, after five years of active service, the commission of finance shall pay from the firemen's pension fund to his widow, a monthly pension equal to  $37\frac{1}{2}$  per cent of the average monthly wage of said fireman for one year next prior to his death, and upon the death of any retired paid or volunteer fireman, receiving a pension at the time of his death, shall pay to his widow a monthly pension equal to three-fourths of the amount of the pension such retired fireman was receiving at the time of his death, and shall pay to each dependent child of such deceased paid or volunteer fireman a monthly pension of \$25.00 for its support and maintenance. The widow of any such retired fireman shall not be entitled to such pension unless she was his wife at the time of his retirement. The payment of the monthly pension for the support and maintenance of the minor children of such paid or retired paid or volunteer fireman shall be made to the person or persons having their care, custody and control.

Should any such fireman die leaving minor children surviving him and no widow entitled to a pension under the provisions of this section, or should the pension award to any widow under the provisions of this section terminate, the commission of finance shall pay from the firemen's pension fund for the support and maintenance of each dependent minor child of such fireman in addition to the monthly payment of \$25.00 as herein provided for, a further sum which, together with said \$25.00 monthly payments, shall be sufficient for the proper support and maintenance of any such dependent minor child, but not exceeding in the aggregate the monthly sum of 37½ per cent of the average monthly wage for one year next prior to his death of such paid fireman who is not on pension, and not to exceed one-half the monthly pension of such fireman receiving a pension, plus \$25.00 for each dependent minor child.

The pension of the widow or for the support and maintenance of any dependent minor child of any fireman, as in this section provided for, shall begin only after the period has ended for which compensation payments may be made under the provisions of the workmen's compensation act and shall cease upon the death or remarriage of such widow or upon such dependent minor child becoming 18 years of age or upon its marriage.

All pensions heretofore awarded to widows and dependent minor children of paid or retired firemen of the same type or kind as in this section provided for and being paid at the time of the passage of this act, shall be revised by the commission of finance to conform with the provisions of this section as to benefit payments to be made after the passage of this act.

#### **49-6-8. Death Benefits — Dying in Performance of Duty — Widow and Dependent Minor Children.**

Upon the death of any paid or volunteer fireman resulting from accident, injury or exposure while in the performance of his duties as such fireman, the commission of finance shall pay from the firemen's pension fund to his widow, a monthly pension computed as follows: (1) to the widow of paid fireman 37½ per cent of the average monthly wage received in the year next prior to the happening of the event resulting in death, and (2) to the widow of volunteer firemen 37½ per cent of the average monthly wage of the lowest salaried full-time fireman of a third class city in the state of Utah, determined as of the date of the event resulting in death, and to each dependent minor child of such deceased paid or volunteer fireman a monthly pension of \$25.00 for their support and maintenance. The payment of the monthly pension for the support and maintenance of the dependent minor children of such fireman shall be paid to the person having their care, custody, and control.

Should any such fireman die leaving minor children surviving him and no widow entitled to a pension under the provisions of this section, or should the pension awarded to any widow under the provisions of this section terminate, the commission of finance shall pay to the properly appointed guardian from the firemen's pension fund for the support and maintenance of each dependent minor child of such fireman, in addition to the monthly payment of \$25.00 as herein provided for, a

further sum which, together with the said \$25.00 monthly payments shall be sufficient for the proper support and maintenance of such dependent minor child, but not exceeding in the aggregate the monthly sum which would have been paid had there been left a widow surviving in addition to such minor children. The clerk of the district court where in the minor child or children reside shall perform his usual duties in connection with the guardianship without payment of costs. The court in its discretion may fix a bond.

The pension for the widow or for the support and maintenance of any dependent minor child of any fireman, as in this section provided for, shall begin only after the period for which compensation payments may have been awarded under the provisions of the workmen's compensation act has ended and shall cease upon the death of such widow or upon such dependent minor child becoming 18 years of age or upon its marriage.

All pensions heretofore awarded to widows and dependent minor children of paid or volunteer firemen of the same type or kind as in this section provided for and being paid at the time of the passage of this act, shall be revised by the commission of finance to conform with the provisions of this section as to benefit payments to be made after the passage of this act.

Approved March 16, 1963.

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## CHAPTER 79

S. B. No. 195.

(Passed March 13, 1963. In effect July 1, 1963.)

### JUDICIAL RETIREMENT

**An Act Amending Sections 49-7-1, 49-7-4 and 49-7-5, Utah Code Annotated 1953, as Enacted by Chapter 87, Laws of Utah 1957, and Enacting New Sections to be Known as Sections 49-7-5.4, 49-7-5.5, 49-7-5.6, 49-7-5.7, 49-7-5.8, 49-7-7.5, 49-7-7.6, Utah Code Annotated 1953, and Repealing Section 49-7-6, Utah Code Annotated 1953, as Enacted by Chapter 87, Laws of Utah 1957, Relating to the Retirement of Supreme Court Justices, Judges of the District Court, and Judges of the City Courts; Providing for a Judges' Retirement Fund, Its Administration and Investment; Providing for Contributions and Transfers to Such Fund; Providing for Terminating City Court Judges' Participation in the Utah Public Employee's Retirement Act; Providing for Retirement Pay to Judges and Their Widows; Providing a Standard for Computing Judge's Age and Years of Service; Providing for Service by a Judge after Retirement; Providing for a Joint Study of the Retirement Needs of the Judicial Branch of State Government and Providing an Effective Date.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 49-7-1, Utah Code Annotated 1953, as enacted by Chapter 87, Laws of Utah 1957, is amended to read:

**49-7-1. Justices of Supreme Court — Judges of District Courts — Retirement.**

Any person who is now serving or may hereafter serve as a justice of the Supreme Court or as a judge of the district court of this state, or as a full time judge of a city court as defined in Section 78-4-1, hereinafter referred to as "judge," shall upon retirement from office either by expiration of his term or by resignation or compulsory retirement, be entitled to receive retirement pay as hereinafter provided.

**Section 2. Section Amended.**

Section 49-7-4, Utah Code Annotated 1953, as enacted by Chapter 87, Laws of Utah 1957, is amended to read:

**49-7-4. Judge with 10 Years' Service Becoming Disabled — Hearing on Retirement.**

Any judge who has had 10 years of service and who becomes disabled as defined in section 49-7-3 shall retire and shall be entitled to the disability retirement compensation provided for in this act. Any judge, regardless of the years of service, who becomes disabled in line of duty or as a result of the performance of his duty, and the widow of every judge who is killed by accident arising out of or in the course of his employment, wheresoever such injury occurred (provided the same was not purposely self-inflicted), shall be entitled to the disability retirement compensation or widows pensions, respectively, provided for in this act. Upon request of the Utah state bar commission, a hearing may be had as to whether a judge should retire under this requirement. Whenever a district judge is involved, the hearing and determination shall be by the supreme court; whenever a justice of the Supreme Court is involved, the hearing and determination shall be by the committee of five district judges to be designated by the governor. Whenever a city court judge is involved, the hearing and determination shall be by the district court of the judicial district in which the city court in which said judge is serving is located. At least 20 days prior to the date of such hearing the judge in question shall be notified of the time, place and purpose of such hearing, and he shall be informed of his right to present evidence and to be represented by counsel. Upon determination and certification to the retirement board and to the governor by the supreme court, or by such committee, or to the mayor of the city by the district court that the judge in question is disabled as defined in section 49-7-3, he shall be placed in retirement status and his office shall be deemed vacant and shall be filled as provided by law.

**Section 3. Section Amended.**

Section 49-7-5, Utah Code Annotated 1953, as enacted by Chapter 87, Laws of Utah 1957, is amended to read:

**49-7-5. Amount of Retirement Pay.**

Each judge whose resignation is accepted, or who is or has been retired under the provisions of this act shall be entitled to receive for the remainder of his life annual disability retirement compensation or

retirement pay at the rate of one-half the annual salary being paid at the time of payment for the highest judicial office he shall have held; however in no event may the retirement compensation granted by this act exceed \$500.00 per month. If a judge (1) dies under circumstances referred to in section 49-7-4, as amended herein, or after having otherwise qualified under this chapter to receive disability retirement compensation or retirement pay and (2) leaves a widow surviving him, such widow if she is the same age or older than her husband shall be entitled to receive for the remainder of her life, a monthly widow's pension of one-half of the disability retirement compensation or retirement pay to which her husband would be entitled if living. If the widow is one or more years younger than her husband, the monthly pension to which she shall be eligible shall be one-half of her husband's pension reduced to an amount which will have the same actuarial value, based upon her age, as would be the value of one-half of her husband's pension, if she were the same age as her husband, at the time of his death. All such payments to judges or their widows shall be computed without regard to any other retirement or social security benefits to which the judge or his widow may be entitled and shall be payable monthly.

#### **Section 4. Sections Enacted.**

Sections 49-7-5.4, 49-7-5.5, 49-7-5.6, 49-7-5.7, 49-7-5.8, 49-7-7.5, and 49-7-7.6, Utah Code Annotated 1953, are enacted to read:

##### **49-7-5.4. Judges Retirement Fees — Contributions by Judges.**

A judge's retirement fee of \$5.00 shall be collected by the clerk of the district court, upon the filing of a complaint, counterclaim, petition for letters of administration or a petition for letters testamentary and for a notice of appeal to the supreme court and a fee of \$2.00 shall be collected by the clerk of all city courts having judges covered by this act upon the filing of a complaint, counterclaim and for a notice of appeal to the district court, and may be taxed as costs in the action.

Persons covered by the judge's retirement act shall contribute 7% of their compensation, but limited to a maximum amount of 7% of \$500.00 per month, to the judge's retirement fund. All judge's retirement fees and contributions so collected shall be transmitted to the state retirement board and shall constitute a judge's retirement fund which is hereby created. This fund shall be administered by the state retirement board, which board is granted all necessary powers to administer the judge's retirement act. The disability retirement compensation, retirement pay and widow's pensions provided for in this chapter shall be paid from the judge's retirement fund.

##### **49-7-5.5. State Retirement Board to Administer and Invest Fund.**

The Utah state retirement board shall administer the fund and shall invest the monies in said fund, not otherwise needed, as it deems proper. The retirement board shall be limited in its investments to investments authorized for the Utah public employee's retirement fund or the Utah school employee's retirement fund. Monies from the judge's retirement fund available for investment may be pooled and comingled with

funds from other state retirement systems in a common investment trust fund for the purpose of investment; however the equity of the judge's retirement fund in the common investment trust fund shall be maintained in a separate trust account on the books of the Utah state retirement office.

Costs of administration, including payment for actuarial services and studies, shall be paid from the fund.

**49-7-5.6. Individual Records to be Maintained — Refunds Procedure.**

Records of contribution made to the fund by persons covered by the judge's retirement act shall be maintained on an individual basis. Should such a person die, resign, or fail to be re-elected before becoming eligible for retirement, his contributions, plus interest credited to his account by the retirement board, shall be paid to his estate or to such beneficiary or beneficiaries as he shall have designated, or shall be refunded to him upon his request.

**49-7-5.7. Benefits After Retirement.**

Any judge who has retired under the provisions of this act and is physically and mentally able to perform the duties of the office shall be entitled after retirement to serve from case to case as a justice of the supreme court upon invitation of the chief justice, or as a judge of the district court upon invitation of the presiding judge of said court, or as a judge of the city court upon invitation of the presiding judge of such court. Such retired judge so sitting shall be required to take and subscribe an oath of office only upon his first sitting in such supreme court or judicial district or city court. For such services he shall receive no additional salary other than the retirement pay specified herein, except that any judge so sitting after retirement shall be paid his travel and sustenance expenses as provided by law for judges.

**49-7-5.8. Termination of City Judges from Utah Public Employee's Retirement System.**

Participation by city court judges in the Utah public employee's retirement act is hereby terminated on all member deposits and equity heretofore a part of the Utah public employees retirement fund shall be credited to said judges in the judge's retirement fund.

**49-7-7.5. Method for Computing Years of Service.**

In computing a judge's age and the number of years of service which a judge has completed for retirement purposes, any fraction of a year more than six months shall be considered as a full year.

**49-7-7.6. Retirement Board to Study Act and Make Recommendations to Legislature.**

Within two years after January 1, 1963, the retirement board, in conjunction with representatives of the Utah Bar Association, the Utah Supreme Court Judges, and the Utah District Court Judges, Utah Legislative Council and two laymen appointed by the governor, shall review the benefits and provisions of the judge's retirement act. If it is determined after study that the said act does not fulfill the basic



retirement needs of the judicial function in state government, and that larger benefits are needed than are provided by the judge's retirement act, the retirement board shall recommend to the legislature such special provisions which should be adopted to provide the required benefits, including contribution rates by members and the judge's retirement fees paid through court filings to actuarially fund the higher benefits. Such recommended legislation, including any other retirement provisions having special application to the judicial branch of state government, shall be submitted to the 1965 Legislature and shall be in such a form as to be incorporated in the judge's retirement act.

**Section 5. Section Repealed.**

Section 49-7-6, Utah Code Annotated 1953, as enacted by Chapter 87, Laws of Utah 1957, is hereby repealed.

**Section 6. Effective Date.**

This act shall take effect July 1, 1963.

Approved March 21, 1963.

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**CHAPTER 80**

S. B. No. 99.

(Passed March 14, 1963. In effect July 1, 1963.)

**HIGHWAY PATROL RETIREMENT**

**An Act Amending Sections 49-8-2 and 49-8-3, Utah Code Annotated 1953, as Enacted by Chapter 86, Laws of Utah 1957, as Amended by Chapter 102, Laws of Utah 1961; and Section 49-8-5, Utah Code Annotated 1953, as Enacted by Chapter 86, Laws of Utah 1957, Relating to the Highway Patrol Retirement System; Providing for the Transferring of the Administration of the Utah Highway Patrol Retirement System and Fund from the State Finance Commission to the Utah State Retirement Board Created by S. B. No. 94, Laws of Utah 1963; Providing for Permitting the Commingling and Pooling of Funds for Investment Purposes; Providing an Effective Date.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 49-8-2, Utah Code Annotated 1953, as enacted by Chapter 86, Laws of Utah 1957, as amended by Chapter 102, Laws of Utah 1961, is amended to read:

**49-8-2. Definitions.**

In this act: "Retirement board" shall mean the Utah State Retirement Board.

"Employees" shall include all male persons included as "civil service employees" or "employees" as defined and prescribed in and included

under the provisions governing the highway patrol civil service, as set out in Chapter 11 of Title 27, Utah Code Annotated 1953.

"Final monthly compensation" shall mean the average monthly compensation received by the employees for the highest three consecutive years preceding his retirement.

**Section 2. Section Amended.**

Section 49-8-3, Utah Code Annotated 1953, as enacted by Chapter 86, Laws of Utah 1957, as amended by Chapter 102, Laws of Utah 1961, is amended to read:

**49-8-3. Utah Highway Patrol Pension Fund — Custodian — Employee Contribution—Withholding—Highway Patrol Contribution.**

The retirement board shall create and administer a fund known as the Utah highway patrol pension fund. Said fund shall at all times be kept on deposit with the state treasurer, who shall be the custodian thereof. The fund shall be invested only in such securities as are lawful and proper for the Utah School Employees' and Utah Public Employees' Retirement funds. Funds available for investment and investment securities held by the Utah highway patrol retirement fund may be pooled with other funds for investment purposes; however, the equity of the Utah highway patrol retirement fund in the common investment trust fund shall be maintained as a separate trust account on the books of the retirement board. The retirement board shall make such regulations as may be necessary or proper to govern the administration of said retirement system. Costs of administration, including actuarial studies and fees, shall be paid from the fund. Each employee shall pay 6.40% of his compensation, and such amount shall be deducted from his wages each payday and paid monthly into said fund. The highway patrol shall pay each month into such fund an amount equal to 7.26% of the wages paid in the preceding month for all employees.

**Section 3. Section Amended.**

Section 49-8-5, Utah Code Annotated 1953, as enacted by Chapter 86, Laws of Utah 1957, is amended to read:

**49-8-5. Actuarial Study — Percentage Rate of Contribution.**

An actuarial study shall be made as of June 30, 1960, and every four years thereafter. Such study shall be conducted under the supervision of an actuary and shall cover the mortality, termination, and compensation experience of the employees and beneficiaries, and shall evaluate the assets and liabilities of the retirement fund. Upon the basis of such study and evaluation the retirement board shall recommend to the legislature any increase or decrease in percentage rate of contribution made by the Utah highway patrol and its employees in order to maintain the retirement fund on an actuarially sound basis. Such percentage shall be computed on the basis of liquidating any accrued liability on account of service prior to the effective date of this act by June 30, 1987.

**Section 4. Effective Date.**

These amendments shall take effect July 1, 1963.

Approved March 18, 1963.

## PUBLIC SCHOOLS

### CHAPTER 81

S. B. No. 70.

(Passed March 14, 1963. In effect May 14, 1963.)

#### SALARY OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

**An Act Amending Section 53-2-8, Utah Code Annotated 1953, as Amended by Chapter 80, Laws of Utah 1953, Chapter 152, Laws of Utah 1957, and Chapter 77, Laws of Utah 1959, Relating to Salary of the State Superintendent of Public Instruction; Providing for Elimination of the Maximum Annual Salary of \$14,000.00.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 53-2-8, Utah Code Annotated 1953, as amended by Chapter 80, Laws of Utah 1953, Chapter 152, Laws of Utah 1957, and Chapter 77, Laws of Utah 1959, is amended to read:

#### **53-2-8. Chairman — Vice-Chairman — Secretary — Superintendent of Public Instruction—Salary—Other Employees.**

The state board of education shall elect from its members a chairman and vice-chairman. Such officers shall be elected or appointed at the first meeting of the board in February, 1952, and each year thereafter. The duties of these officers shall be determined by the board. The board shall also appoint a secretary of the board who shall serve at the pleasure of the board.

The state board of education shall appoint and shall fix the salary of the state superintendent of public instruction, who shall be the executive officer of the board.

The board may appoint such assistant superintendents, directors, supervisors, assistants, clerical workers, and other employees, as in the judgment of the board may be necessary to the proper administration and supervision of the public school system. The salaries of such assistant superintendents, directors, supervisors, assistants, clerical workers and other employees, shall be fixed by the board and shall be paid from money appropriated for that purpose.

Approved March 19, 1963.

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### CHAPTER 82

S. B. No. 51.

(Passed March 14, 1963. In effect May 14, 1963.)

#### BOARD OF EDUCATION TRAVEL EXPENSES

**An Act Amending Section 53-2-9, Utah Code Annotated 1953, Relating to Members of the State Board of Education; Providing that Actual and Necessary Travel Expense Incurred by Members Be Filed with and Approved by the Director of the Department of Finance.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-2-9, Utah Code Annotated 1953, is amended to read:

**53-2-9. Board Members — Salaries — Travel Expenses.**

The members of the board shall receive an allowance of \$300.00 per year, payable monthly, in addition to necessary traveling expenses. Traveling Expenses.

A statement of actual and necessary traveling expenses of members of the board incurred in attending meetings of the board or performing duties authorized by the board must be certified by the state superintendent of public instruction and filed with the director of the department of finance, who shall allow or reject the same in whole or in part.

Approved March 20, 1963.

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**CHAPTER 83**

S. B. No. 38.

(Passed March 9, 1963. In effect May 14, 1963.)

**PUBLIC SCHOOL LIBRARIES**

**An Act Amending Section 53-2-14, Utah Code Annotated 1953, Relating to Public Schools; Providing for Increasing the Power of the State Board of Education in Respect to Public School Libraries.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-2-14, Utah Code Annotated 1953 is amended to read:

**53-2-14. Promotion of Libraries and Gymnasium.**

The State Board of Education shall promote the establishment and improvement of public school libraries, and shall provide for state wide supervision of those libraries. It shall adopt standards, rules and regulations as may be necessary to provide adequate school library service. It is empowered and encouraged to cooperate with the Utah State Library and other agencies in providing school library service.

Approved March 11, 1963.

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**CHAPTER 84**

S. B. No. 69

(Passed February 26, 1963. In Effect May 14, 1963)

**QUALIFICATION OF STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

**An Act Amending Section 53-3-1, Utah Code Annotated 1953, Relating to the Superintendent of Public Instruction; Providing for Changes in the Qualifications of the Office of State Superintendent of Public Instruction.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-3-1, Utah Code Annotated 1953, is amended to read:

**53-3-1. Appointment of State Superintendent—Qualifications—Oath and Bond.**

The state board of education shall appoint a superintendent of public instruction, hereinafter called the state superintendent, who shall be the executive officer of the board and who shall serve at the pleasure of the board. The state superintendent of public instruction shall have attained the age of thirty years and shall be the holder of a state certificate of the highest grade issued in some state or shall be a graduate of some reputable university, college or normal school. Before entering upon his duties he shall take the oath of office and give a bond to the state in the penal sum of \$5,000.00 to be approved, recorded and filed as provided by law.

Approved March 1, 1963.

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**CHAPTER 85**

H. B. No. 185

(Passed March 14, 1963. In effect May 14, 1963.)

**PUBLIC SCHOOL ATTENDANCE****An Act Amending Section 53-4-7, Utah Code Annotated 1953, Extending the Age Limitation for Free Attendance to Public Schools up to Twenty-One for Those Who Have Not Completed High School.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-4-7, Utah Code Annotated 1953, is amended to read:

**53-4-7. Schools to be Free.**

In each school district the public schools shall be free to all children between the ages of six and eighteen years who are residents of said district except that such schools shall also be free to persons who have not completed high school up to and including the age of twenty-one years.

Approved March 19, 1963.

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**CHAPTER 86**

H. B. No. 186.

(Passed March 14, 1963. In effect May 14, 1963.)

**VACANCIES ON LOCAL BOARDS OF EDUCATION****An Act Amending Section 53-5-8, Utah Code Annotated 1953, Relating to Elections to Fill Vacancies Occurring on Local Boards of Education; Providing that the Clerk of Each Board is to Give Notice of the**

**Date When Nominations for Election to the Board are to be Received and Prescribing the Manner and Contents of Such Notice.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-5-8, Utah Code Annotated 1953, is amended to read:

**53-5-8. Nomination of Candidates — Judges of Election — Ballots and Supplies—Returns.**

At least sixty days preceding the day of election provided for in section 53-5-7 the clerk of the local board of education shall cause to be posted in at least three conspicuous places within the school representative precinct or municipal ward as to which a member of such board is to be elected at this election and cause to be published in at least one issue of a newspaper of general circulation common to the area a notice that nominations in writing must be filed with the clerk of the board of county commissioners by a candidate, or by at least five citizens on behalf of a candidate, not less than thirty days preceding the day of the election. This notice shall also contain information as to the time and the place of the election. Appointment of judges, except where combined with municipal elections, shall be made by the board of county commissioners prior to the day of election. The board of county commissioners shall furnish to the judges of election at every polling place a sufficient number of official ballots and other supplies for local school board election purposes. Said local board shall pay all lawful and necessary expenses of election except where combined with municipal elections. The board of county commissioners shall exercise all such powers relative to elections of local boards of education as are conferred by law for other elections so far as conformable with this chapter. In cases where elections are combined with municipal elections the returns for local school board elections shall be filed with the board of county commissioners by the judges of election.

Approved March 19, 1963.

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**CHAPTER 87**

H. B. No. 177.

(Passed March 14, 1963. In effect May 14, 1963.)

**APPORTIONMENT OF UNIFORM SCHOOL FUND**

**An Act Amending Section 53-7-4, Utah Code Annotated 1953, as Amended by Chapters 105 and 106, Laws of Utah 1961, Providing for an Apportionment out of the Uniform School Fund to the Geological and Mineralogical Survey and the Water Research Laboratory.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-7-4, Utah Code Annotated 1953, as amended by Chapters 105 and 106, Laws of Utah 1961, is amended to read:

**53-7-4. Amounts to be Apportioned to Junior Colleges — Weber College**

— Area Vocational Schools — University of Utah and Utah State University — Use of Funds for Research.

There shall be apportioned to the junior colleges, Weber College, the area vocational schools, the University of Utah, and the Utah State University 45 per cent of each of the following amounts in the uniform school fund: sums paid for fees including grazing fees, and all forfeitures and all penalties received in connection therewith; all amounts received from the United States under the provisions of the Act of Congress of February 25, 1920, known as "The Leasing Act" (41 Stat. 450) which are allocated to said uniform school fund; and all moneys received from sales, royalties, bonuses, leases and rentals of minerals of all kinds in lands acquired through tax sales to the counties, together with all sums paid for fees, forfeitures, and all penalties received in connection therewith. There shall be apportioned to the Utah State Board of Education  $3\frac{1}{3}$  per cent of each of the foregoing amounts in the uniform school fund, such moneys to be used for education research and experimentation in the utilization of staff and facilities designed to improve the quality of education in Utah. There shall be apportioned to the Utah Geological and Mineralogical Survey at the University of Utah  $3\frac{1}{3}$  per cent of each of the foregoing amounts in the uniform school fund, such moneys to be used in furtherance of activities carried on by the Survey having as a purpose the development and exploitation of natural resources in the State of Utah. There shall be apportioned to the Water Research Laboratory at Utah State University  $3\frac{1}{3}$  per cent of each of the foregoing amounts in the uniform school fund, such moneys to be used in furtherance of activities carried on by the Laboratory having as a purpose the development and exploitation of water resources in the State of Utah. The apportionment to the Utah Geological and Mineralogical Survey at the University of Utah and to the Water Research Laboratory at Utah State University shall be in addition to any moneys to which the University of Utah and Utah State University are otherwise entitled under the provisions of this section. The amount to which each of the junior colleges, Weber College, the area vocational schools, the University of Utah, and the Utah State University is entitled, shall be that proportion of the total amount available which the average number of full-time students enrolled during the preceding year in such institutions, bears to the total enrollment of all said institutions, except the enrollment of the University of Utah and the Utah State University shall first be multiplied by 1.25 and the product shall constitute the enrollment of the University of Utah and the Utah State University for the purpose of this apportionment. Moneys allocated to the University of Utah and the Utah State University under this section shall be used for research purposes.

Approved March 18, 1963.

## CHAPTER 88

S. B. No. 234.

(Passed March 14, 1963. In effect May 14, 1963.)

## SCHOOL FUND FORMULA

**An Act Amending Sections 53-7-16, 53-7-18, 53-7-19, 53-7-22, 53-7-24, and 53-7-25, Utah Code Annotated 1953, as Enacted by Chapter 104, Laws of Utah 1961, Relating to the State-Supported Minimum School Program; Providing for an Increase in the Distribution Unit Amount of the Basic Program; and Providing for a State-Supported Leeway and Board Leeway Program Authorization.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Sections 53-7-16, 53-7-18, 53-7-19, 53-7-22, 53-7-24, and 53-7-25, Utah Code Annotated 1953, as enacted by Chapter 104, Laws of Utah 1961, are amended to read:

**53-7-16. Definitions.**

Unless a different meaning is plainly required, the following words and phrases used in this act shall have the following meanings:

(a) "State supported minimum school program" or "minimum school program" means such school program for elementary, kindergarten and high schools as may be operated and maintained for the total of the following annual costs:

- (1) The cost of a basic state-supported school program.
- (2) The cost of a state supported leeway program.
- (3) The cost or amount of one-half of the budget of the state board of education as approved for the biennium by the legislature.
- (4) The cost or the amount of the employer contribution required by local school boards, the Union High School at Roosevelt, Utah, the state board of education and the Utah school retirement board under the provisions of the Utah school employees' retirement act.
- (5) The cost or amount of the employer's contribution under the terms of Title II of the Federal Insurance Contributions Act in accordance with section 67-11-5, Utah Code Annotated 1953, for the employing units, political subdivisions and instrumentalities enumerated in sub-paragraph 4 of this section.

(b) "Basic state-supported school program" or "basic program" means such educational program for elementary, kindergarten and high schools which can be operated and maintained for the total of the following sums:

- (1) The amount derived by multiplying the number of distribution units for each school district by \$6,850.00 and
- (2) The cost of state-supported transportation of each school district.

(c) "Distribution unit or units" means the unit of measure or factors which are computed in accordance with the provisions of section 53-7-21 for the purpose of determining the costs of a basic program on a uniform basis for each district.



(d) "State-supported transportation" or "transportation means the lesser of the following amounts:

(1) An amount equal to \$2.00 per mile annually for the average number of miles traveled per day by each pupil who is actually transported, provided that said computation shall be applied to the transportation of each pupil regularly enrolled in kindergarten through grade six who is actually transported one and one-half miles or more each way between home and school and each pupil regularly enrolled in grades seven through twelve who is transported two or more miles each way; or

(2) Three-fourths of the total actual transportation cost for the state.

(e) "State-supported leeway" program or "state leeway" means that portion of the costs of operation and maintenance of the state-supported minimum school program in each district which can be operated and maintained by an amount equal to the amount derived by multiplying the number of distribution units of said district by \$150.00 or multiples of said amount as elected by the district pursuant to section 53-7-19, hereof.

Said term may be used collectively to mean the total of state-supported leeway programs of all districts.

(f) "Minimum basic tax levy" or "minimum basic levy" means the mill levy which each school district must impose in order to make its contribution toward the cost of the basic state-supported school program.

#### **53-7-18. State Contributions Toward Basic Program — Minimum Basic Tax Levy of School District.**

The state shall contribute to each district toward the cost of the basic state-supported school program in such district, that portion thereof which exceeds the proceeds of a minimum basic tax levy of 16 mills imposed by such district.

In order to qualify for receipt of said state contribution toward the basic program and as its contribution toward its cost of said basic program, each school district shall impose a minimum basic tax levy of 16 mills.

In the school districts wherein the proceeds of said minimum basic tax levy equal or exceed the cost of the basic state-supported school program, there shall be no contribution by the state toward the basic program. The proceeds of any said minimum basic tax levy of a school district which exceed the cost of the basic program shall be paid into the uniform school fund as provided by law.

The amount of the state's contribution toward the cost of the state-supported transportation included in the basic program shall annually be apportioned and distributed from the uniform school fund to the several school districts on the basis of a formula to be promulgated by the state board of education. No district shall receive an amount for this purpose which exceeds that actually expended by it for transportation, exclusive of capital outlay, during the current fiscal year.

**53-7-19. State Contributions Toward Leeway Program — District Leeway Tax Levy.**

The state shall contribute to each district toward the cost of the state-supported leeway program in each district that portion thereof which exceed the proceeds of each one-mill levy imposed by such district in addition to its minimum basic tax levy up to and including 4 mills.

In order to qualify for receipt of said state contribution toward its state-supported leeway program and as its contribution toward the cost of its state-supported leeway program and for the purpose of determining the size of its state-supported leeway program, each school district may impose a tax levy, in addition to its minimum basic tax levy, which may range, in multiples of one, from one mill, to and including 4 mills.

In school districts wherein the proceeds of a 1-mill levy equal or exceed the cost of the \$150.00 per distribution unit state-supported leeway program in said district, there shall be no leeway contribution by the state.

**53-7-22. Board Leeway Program — When Authorized — Limitation.**

A school district which qualified for the receipt of contributions from the state toward its basic state-supported school program or the levy of which produces sufficient funds to pay the cost of its basic program, may by action of its local board maintain a school program of operation and maintenance in excess of its state-supported minimum program. Said additional program shall be known as the "board leeway" program and the total cost of any board leeway program shall not exceed the basic state-supported program by more than an amount equal to the number of distribution units multiplied by \$437.00 or the amount which may be provided by a local levy of not to exceed 4 mills, whichever amount is greater. The board leeway authority shall be in addition to the 4 mill levy authorized for the state-supported leeway program by section 53-7-19, hereof.

**53-7-24. Voted Leeway Program Authorized — Election Requirements.**

With the consent of a majority of the electors of the district voting at an election or elections held for that purpose in the manner set forth in section 53-7-12, Utah Code Annotated 1953, any district may maintain a school program in excess of the cost of the program referred to in sections 53-7-22 and 53-7-23, Utah Code Annotated 1953. Said additional program shall be known as the "voted leeway" program of the district. Said voted leeway program shall not exceed an amount equal to 16 per cent of the basic program of the district.

Consideration of such additional program and of modification, increases or decreases thereof by such elections may be initiated by a petition signed by electors of the district equal to 10 per cent of the number of electors who voted at a preceding election on said question or by action of the board of education. A subsequent election upon the question of modifying or increasing such an additional program shall not be deemed to constitute a reconsideration of the existing additional voted leeway program unless the proposition submitted to the electors expressly so states. Accordingly, a majority vote opposing said modifi-

cation or increase shall not be deemed to deprive the district of authority to continue said existing voted leeway program. Nothing contained in this section shall be construed as terminating without an election, thereon, the authority of any school district to continue an existing voted additional program heretofore authorized by the voters.

**53-7-25. Federal Moneys Received by District — Deduction for Allocation of State Aid.**

Federal moneys received by a specific local school district which are available toward the cost of its basic state-supported minimum school program shall be deducted from its allocation of state aid for such purposes in the ratio of six and one-half mills divided by its total tax levy for current operation and maintenance; provided, that if any such deduction shall reduce federal funds available or prevent the obtaining of federal moneys in whole or in part, then no credit shall be made against the allocation of state aid to a local school district and provided further that the deduction for any school district shall not exceed the percentage which the deduction for the district for the year 1960-61 bears to the total cost of current operation and maintenance of schools in the district.

Approved March 19, 1963.

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**CHAPTER 89**

H. B. No. 166.

(Passed March 4, 1963. In effect May 14, 1963.)

**PUBLIC SCHOOL BONDS**

**An Act Amending Sections 53-10-14 and 53-10-16, Utah Code Annotated 1953, Relating to Bonds of Public Schools Increasing the Denomination of Bonds From \$50 to \$100 and Providing for the Use of Facsimile Signature and Facsimile Seal When Bonds are Issued by a School District.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-10-14, Utah Code Annotated 1953, is amended to read:

**53-10-14. Bonds — Denomination — Terms — Interest — Right to Redeem.**

The denomination of the bonds which may be issued under the provisions of this chapter shall be \$100 or some multiple of \$100. The bonds shall be made payable not more than twenty years from their date and shall bear interest at not exceeding five per cent per annum payable semiannually or annually in accordance with the interest coupons which shall be attached to said bonds. The board of education may reserve the right to redeem such bonds or any of them at any time after five years from their issue.

**Section 2. Section Amended.**

Section 53-10-16, Utah Code Annotated 1953, is amended to read:

**53-10-16. Form — Certification.**

Whenever any bonds are issued under the provisions of this chapter they shall be of bond paper and there shall be engraved, lithographed, or printed on the face thereof the date of their issue, the amount of the bond, for what purpose issued, the time and place of payment and rate of interest to be paid. They shall have printed upon the margin the words, "Authorized by Act of the Legislature of the State of Utah," and upon the back of each bond shall be printed a certificate, (signed by the county clerk,) in substantially the following form:

I certify that the within bond is issued in accordance with law, and is within the debt limit permitted by the constitution and laws of the State of Utah, and in accordance with the vote of the taxpayers of .....school district of.....County, State of Utah, at an election held on the.....day of....., 19....., authorizing bonds to the amount of.....dollars.

They shall be signed by the president and the clerk of the board of education and countersigned by the treasurer thereof, and there shall be entered in a book to be kept by the clerk of the board of education for that purpose the number, date and denomination of each bond sold, and the date when the same will become due.

"Facsimile signature" means a reproduction by engraving, imprinting, lithographing, stamping or other means of the manual signature of an authorized officer.

(a) If the use of a facsimile signature is authorized by the board of education, any authorized officer may execute, authenticate, certify, or endorse, or cause to be executed, authenticated, certified or endorsed with a facsimile signature in lieu of his manual signature:

(b) Any bond, issued by the board of education or any certificate required to be executed on the back thereof, provided that at least one signature required or permitted to be placed on the face thereof shall be manually subscribed; and

(c) In any suit or legal action instituted against the officer whose name is affixed under the provisions of this act, it shall not be a defense that such name was affixed to any bond, without his authority or consent. Upon compliance with this act by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

(d) When the seal of the board of education is required in the execution, authentication, certification, or endorsement of any bond, or any certificate required to be executed on the back thereof, the authorized officer may cause the seal to be printed, engraved, lithographed, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

Any person who with intent to defraud uses on a public security or an instrument of payment:

A facsimile signature, or any reproduction of it, of any authorized officer; or

Any facsimile seal, or any reproduction of it, of the board of education shall upon conviction be confined in the penitentiary not less than two nor more than seven years.

Approved March 5, 1963.

## CHAPTER 90

H. B. No. 49.

(Passed March 14, 1963. In effect May 14, 1963.)

**SCHOOL BUILDING PROGRAM**

**An Act Amending Sections 53-11-1, 53-11-2, 53-11-3 and 53-11-4, Utah Code Annotated 1953, Relating to the Powers and Duties of the State Board of Education, State Superintendent of Public Instruction and Local School Districts Pertaining to the Planning, Designing and Constructing of Local School District Buildings.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Sections 53-11-1, 53-11-2, 53-11-3 and 53-11-4, Utah Code Annotated 1953, are amended to read:

**53-11-1. Advertising for Bids — Contractors Bond — Terms of Contract—Construction Without Contract—Interest of Members.**

Whenever any school house is to be built, or alteration of any existing school plant is to be made, the total accumulative building project cost of which is estimated to be in excess of \$20,000, the local board of education shall advertise for at least ten days in a newspaper having general circulation throughout the state and in some newspaper published in the city when in school districts of cities of the first and second class, and in some newspaper published in the county or having general circulation in the county when in county school districts, for sealed proposals for such building project in accordance with the plans and specifications, which shall be furnished by the board of education. Such advertisement or notice shall state the place where, and the day and hour when, the proposals will be opened, and shall reserve the right to reject any and all proposals and require a certified check or bid bond of not less than five per cent of the amount of the bid to accompany the same. If the bid is less than \$5,000, the board may accept a certified check in the amount of at least five per cent of the bid in place of the bid bond. Such check or bond shall be drawn in favor of the board of education, and the check or bond of the accepted bidder shall be forfeited in case he fails or refuses to enter into the contract and furnish the additional bonds herein required. At the time and place specified in said notice the board shall meet and publicly open and read all proposals received, and, if satisfactory bids have been received, shall award the contract to the lowest responsible bidder. The local board shall require of such bidder a 100 per cent full performance bond in the amount of the contract price, conditioned that he will fulfill the contract in accordance with its provisions. In addition, the local board shall require a 100 per cent full payment bond. In case none of the proposals are satisfactory, all shall be rejected, and said board shall advertise anew in the same manner as before. It may require in the contract to be executed that at least ten per cent of the contract price may be withheld until the building project is completed and accepted by the board. If after twice advertising as provided herein no satisfactory bid is received, the board may proceed under its own direction to erect the building required, or

in case of a building not exceeding \$5,000 in cost, if no satisfactory bid is received after the first notice, the board may proceed with construction as it may determine; provided, that no member of the board of education shall be financially interested in any contract, directly or indirectly, for the erection or alteration of a school building.

**53-11-2. State Superintendent to Approve Plans.**

No school building or alteration thereto shall hereafter be contracted for or erected in any county school district or in cities other than the first class the total annual accumulative building project cost of which exceeds \$20,000, until the plans and specifications for the same shall have been submitted in duplicate to the state superintendent of public instruction and his approval or the approval of the person designated by him has been endorsed thereon. The approval, when granted, shall be signed on the plans and specifications in accordance with rules and regulations prescribed by the state board of education. The review and approval of the plans and specifications shall not be granted unless such plans and specifications are in factors of functional utility, economy and a reasonable balance between initial and long-time costs. In order to assure safety to occupants, the approval shall be based upon compliance with standard building codes adopted by the state board of education and the state building board. All projects less than \$10,000 in cost shall conform to standards and codes adopted by the state board of education.

One set of the approved plans and specifications and one set of the "as built" plans shall be provided for permanent file in the office of the state superintendent of public instruction.

**53-11-3. Duties of State Board of Education — Concerning Buildings.**

The state board of education shall perform the following duties:

(1) Adopt codes to govern the preparation of plans and specifications for school buildings in all school districts, except those of cities of the first class. Such codes shall include minimum standards for construction, heating, ventilation, sanitation, lighting, plumbing, structural safety, protection from fire, panic and other dangers, and promoting the safety, health and comfort of the occupants, and providing functional adaptability including suitable facilities for handicapped.

(2) Cause to be prepared and kept current by local school districts an accurate inventory of school plant facilities. Such inventory shall be maintained in conformance with rules and regulations established by the state board of education.

(3) Establish, by rules and regulations, planning procedure for the use of local districts, except those cities of the first class, to determine the need for school plant facilities. Such rules and regulations shall define methods, criteria and other pertinent information, including items of cost per square foot or some other unit of measure, necessary to determine type, size, location and cost of school plant needs as a basis for state financial participation.

(4) Cause to be prepared and maintained, by local school districts, surveys of school plant capital outlay needs. Such surveys shall include immediate and long-range school plant capital outlay needs in accord-

ance with planning procedures established by the state board. The planning procedures shall include space utilization studies, enrollment projections, district and attendance area organization, class size, conditions of present facilities, financial structure of the district, and other necessary information.

(5) Prepare a format to be used as a guide by local districts to formulate educational specifications for individual building projects.

(6) Recommend minimum requirements for contracts and agreements between architects and engineers and local boards of education. As a condition of the contract or agreement, the state board shall require the use of independent licensed consulting engineers for engineering design work.

(7) Recommend minimum requirements for advertising, bidding and contractual procedures for school plant construction.

(8) Make available to local districts for school building planning, findings regarding school designs, including flexibility of design and modular planning, new methods of construction and new material.

(9) Prepare annually a school plant capital outlay report of all local districts, including tabulations of facilities available, number and size of projects completed and under construction and additional facilities required.

#### **53-11-4. State Superintendent to Enforce Provisions of Chapter.**

The state superintendent is hereby charged with the enforcement of the provisions of this chapter, and whenever it is necessary he may employ an architect or other qualified personnel or contract with the state building board for services to examine the plans and specifications of any school building or alteration, except those of cities of the first class, thereto submitted as provided above, to inspect any such school building in the course of construction, and perform other functions necessary to insure compliance with the provisions of this chapter. The state superintendent shall notify the board of education constructing said building of any nonconformity with the provisions of this chapter and shall make recommendations; and it shall be the duty of said board to comply therewith. The compensation and expenses for services under this chapter shall be paid out of the uniform school fund upon approval of the state board of education.

Approved March 22, 1963.

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## **CHAPTER 91**

S. B. No. 194.

(Passed March 14, 1963. In effect July 1, 1963.)

### **SCHOOL BUILDING AID**

**An Act Amending Sections 53-11-45, 53-11-46, 53-11-49 and 53-11-50, Utah Code Annotated 1953, as Enacted by Chapter 107, Laws of Utah 1961, Appropriating Funds for State Aid to Qualified School Districts and Determining the Method of Distribution of State Funds.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Sections 53-11-49 and 53-11-50, Utah Code Annotated 1953, as enacted by Chapter 107, Laws of Utah 1961, are amended to read:

**53-11-49. Appropriations from State General Fund — Funds Available Under Prior Law.**

(1) There is hereby appropriated to the state board of education from the state general fund, not otherwise appropriated, the sum of \$4,100,000 for distribution to school districts which qualify for state building aid in accordance with provision of Sections 53-11-40, 53-11-41, 53-11-42, 53-11-43, 53-11-44, 53-11-45, 53-11-46, 53-11-47 and 53-11-48, Utah Code Annotated 1953. An amount of \$50,000, including \$25,000 reserved for payments to the state building board, or so much thereof as may be necessary of this appropriation shall be reversed for necessary expenses of the state board of education incurred in administering the provisions of Sections 53-11-40, 53-11-41, 53-11-42, 53-11-43, 53-11-44, 53-11-45, 53-11-46, 53-11-47 and 53-11-48, Utah Code Annotated 1953. Not more than one-half of the total appropriation shall be allocated and distributed among qualifying districts during the school year beginning July 1, 1963 and ending June 30, 1964.

Hereafter there shall be appropriated to the state board of education from the state general fund for distribution to school districts qualifying for state building aid such amounts per biennium as the state board of education shall certify to the state legislature as required to implement the provisions of this act.

The funds here appropriated shall not lapse or be closed out by the state fiscal officers or local boards of education. Any unallocated or unobligated funds available under the terms of chapter 107, Laws of Utah 1961, existing on June 30, 1963, or which may accrue because of construction cost of any project being less than the funds which were allocated for the project under the terms of that or any previous state building aid law, are hereby appropriated to the state board of education for carrying out the purposes of this act.

(2) There is hereby appropriated to the state board of education from the general fund, not otherwise appropriated, for the period July 1, 1963, to June 30, 1965, in addition to funds appropriated in (1) above, the sum of \$3,000,000 for distribution to school districts which have bonded indebtedness equal to 97 per cent of legal capacity and which qualify for state building aid in accordance with Sections 53-11-40, 53-11-41, 53-11-42, 53-11-43, 53-11-44, 53-11-45, 53-11-46, 53-11-47 and 53-11-48, Utah Code Annotated 1953, subject to the following conditions as determined by the state board of education:

(a) Classroom needs of a district shall be determined in accordance with sections 53-11-41 and 53-11-42, Utah Code Annotated 1953, but limited to classroom needs of a district for the current school year.

(b) Resources of a district shall be computed as an amount equivalent to any additional bonding capacity, plus the yield from a 12 mill local levy in excess of current year's interest on net long term bond liability, plus any building funds available, including any state and federal funds appropriated or to be allocated or available for capital out-



lay for the current school year. Resources shall include continuing or building aid funds under Chapter 11, Title 53, Utah Code Annotated 1953, as amended.

(c) The total number of classrooms needed by a district computed under (a) above as limited to the current school year and multiplied by \$35,000 per classroom, less resources computed under (b) above shall represent the district's unmet classroom needs.

(d) Funds shall be distributed to each of the districts which qualifies under (c) above in the same proportion that the unmet classroom needs of each district bears to the total unmet classroom needs of all qualifying districts.

#### **53-11-50. Effective Date.**

Funds appropriated by this act shall be made available after July 1, 1963.

#### **Section 2. Section Amended.**

Section 53-11-45, Utah Code Annotated 1953, as enacted by Chapter 107, Laws of Utah 1961, is amended to read:

#### **53-11-45. Alternate Building Aid — Requirements for Qualifying for Aid.**

In order to qualify for receipt of alternate building aid from the state, the local board of the school district must:

(a) File an application for alternate building aid from the state on or before June 1 of the year preceding the school year for which it seeks said aid.

(b) Certify to the state board that the district is eligible for state building aid.

(c) Have an assessed valuation per pupil in average daily membership in the district for the previous school year less than the average of the averages of the assessed valuation per pupil in average daily membership of all the school districts in the state.

(d) Incur and certify to the state board on or before December 31st of said year that the district has incurred bond liability equal to at least 95 per cent of the legal bonding capacity of the district.

(e) Impose a tax levy in excess of 12 mills during each year for which it seeks to qualify for alternate building aid. Said district may impose said excess levy in units of one-fourth mill and may utilize up to one and three-fourths mills, i.e., seven excess levy units for matching alternate building aid funds from the state.

Said levy shall be used for the service of debt and capital outlay incurred for expenditures such as acquisition of sites, construction of buildings, additions to existing buildings, the purchase of furnishings and equipment for said buildings or the remodeling or modernization of existing school plants. Levies necessary to amortize and pay interest on outstanding bonds and the levy required for a district under the continuing school building program shall be deemed includable as part of said qualifying levy.

**Section 3. Section Amended.**

Section 53-11-46, Utah Code Annotated 1953, as enacted by Chapter 107, Laws of Utah 1961, is amended to read:

**53-11-46. Alternate Building Aid — Determination of Amount Received by District.**

The amount that the districts qualifying for alternate building aid shall receive from the state in any qualifying year shall be determined as follows:

(a) The state board shall ascertain the amount of property tax levy in excess of 12 mills the district is imposing for the qualifying school year.

(b) As alternate building aid the state shall contribute to each said district for each one-fourth mill levy that it imposes in excess of 12 mills up to one and three-fourths mills, an amount bearing the same ratio to the amount it raised by said excess levy that the school district's state contribution to its basic state-supported program bears to the district's contribution thereto.

(c) Subject to the allocation provisions of section 53-11-47, the amount of alternate building aid that a qualifying school district shall receive shall be equal to the amount computed in paragraph (b) above.

Approved March 20, 1963.

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**CHAPTER 92**

S. B. No. 39

(Passed February 20, 1963. In Effect May 14, 1963)

**IDEALS OF THE U.S. PREREQUISITES IN  
COLLEGES AND UNIVERSITIES**

**An Act Requiring Reasonable Understanding of the Fundamentals of the History and the Principals and Form of Government of the United States as a Basis for Responsible Citizenship.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Fundamentals of History and Government.**

Any student receiving a bachelor's degree or teaching credential from any tax supported university or college within this state shall before receiving such degree or credential demonstrate reasonable understanding of the fundamentals of the history and the principles, form of government, and economic system of the United States as a basis for responsible citizenship.

**Section 2. Prescribe Regulation.**

The governing boards of the respective universities and colleges shall prescribe by regulation appropriate methods for satisfying this requirement.

Approved February 27, 1963.

**CHAPTER 93**

S. B. No. 164.

(Passed March 14, 1963. In effect May 14, 1963.)

**PRIVATE SCHOOL DRIVER EDUCATION**

**An Act Enacting a New Section to the Utah Code Annotated 1953, to be Known as Section 53-14-13.5, Allowing Pupils of Regularly Established Private Schools to Enroll in Public Schools for the Purpose of Receiving Driver Education.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Enacted.**

Section 53-14-13.5, Utah Code Annotated 1953, is enacted to read:

**53-14-13.5. Private School Driver Education.**

Local school districts maintaining automobile driver education classes shall allow pupils enrolled in grades nine to twelve, inclusive, of regularly established private schools located in said school district to enroll in the most accessible public school in said school district for the purpose of receiving driver education. The enrollment of such pupils of regularly established private schools shall be on the same terms and conditions as applies to the pupils of public schools within said school district, as such terms and conditions relate to the driver education classes only.

Approved March 20, 1963.

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**CHAPTER 94**

H. B. No. 63

(Passed March 14, 1963. In effect June 1, 1963)

**VOCATIONAL EDUCATION**

**An Act Amending Section 53-16-7, Utah Code Annotated 1953, as Enacted by Chapter 124, Laws of Utah 1961, Providing for the Awarding of Additional Distribution Units to High Schools for Vocational Training in the State.**

**Section 1. Section Amended.**

Section 53-16-7, Utah Code Annotated 1953, as enacted by Chapter 124, Laws of Utah 1961, is amended to read:

**53-16-7. Vocational Classes in School Districts.**

To meet more nearly the labor training needs of Utah's rapidly expanding business and industrial economy and to aid in defraying the additional costs involved in vocational courses in the upper two grades of publicly supported senior high schools in Utah, additional distribution unit considerations shall be made according to the following standards:

(1) In addition to the regular distribution unit formula for all students provided for by Section 53-7-21, Utah Code Annotated 1953, as enacted by Chapter 104, Laws of Utah 1961, one distribution unit shall be allowed to school districts for each twenty-seven students, juniors

or seniors, in average daily attendance in vocational courses approved by the State Board for Vocational Education and conducted during the regular school year in publicly supported schools. The state board of education may grant additional consideration, not to exceed one distribution unit per high school, to districts having small high schools which cannot otherwise qualify to conduct approved vocational programs. Where vocational class time is less than a full school day or a full nine-month term, the additional distribution unit allowance will be prorated according to the ratio which the fractional class time bears to a full day or a full nine-month term. Such courses shall be designed to aid students in the development of marketable skills and abilities to make them more employable immediately upon high school graduation or to help them in furthering their training preparation as students in the highly skilled and technical courses in post-high school vocational programs. High school level courses to be considered in the above training may include distributive education, vocational business, trade and industrial education, and such other courses as the state board for vocational education may prescribe. Any approved vocational course conducted in publicly supported schools is eligible for distribution unit consideration.

Where high school students are released by school districts during the regular school year and such students are registered in approved courses in area vocational schools, these schools shall be reimbursed by the school districts concerned on the basis of one and one-half distribution units out of two distribution units the district may claim for such training. Such units shall be computed in the amount of the state supported minimum program.

(2) The state board shall establish standards for such courses, including credit allowed, and shall be responsible for the development of instructional outlines and other teacher aids together with teacher training programs to improve the competencies of teachers concerned.

(3) Vocational programs may be conducted during the summer months in the senior high schools or at the area vocational schools for juniors and seniors still in high school and graduates who have graduated from high school any time during the year previous to the summer in which they are enrolled. Approved summer vocational courses conducted in high schools or vocational schools shall not be less than nine weeks duration of five days per week and six hours per day. Three eighths of a distribution unit per twenty-seven students in average daily attendance will be granted for such courses. Where such courses are conducted for less than these time standards, the distribution unit consideration shall be reduced and prorated accordingly. The area vocational schools shall be reimbursed by the school district for the same amount per distribution unit as said district receives for summer vocational courses.

(4) Payments for the above programs shall be made by the state direct to the school districts concerned upon receipt of the proper reports from these educational agencies by the state department of education. The school district shall reimburse the area school for instruction.

(5) The state shall contribute to each qualifying district the amount

of the basic state-supported program as defined and computed in Section 53-7-18, Utah Code Annotated 1953, as enacted by Chapter 104, Laws of Utah 1961, and the state-supported leeway program as defined and computed in Section 53-7-19, Utah Code Annotated 1953, as enacted by Chapter 104, Laws of Utah 1961, for the distribution units allowed under Section 53-16-7, of this act. The total number of distribution units allowed in the state under this act shall not exceed 40 per year.

**Section 2. Effective Date.**

This act shall take effect June 1, 1963.

Approved March 21, 1963.

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**CHAPTER 95**

H. B. No. 88

(Passed February 28, 1963. In Effect May 14, 1963)

**UTAH TECHNICAL INSTITUTE AT PROVO**

**An Act Amending Section 53-16-14, Utah Code Annotated 1953, Changing Name of Central Utah Vocational School to Utah Trade Technical Institute at Provo and Relating to Its Management, Control and Supervision.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-16-14, Utah Code Annotated 1953, is amended to read:

**53-16-14. Utah Trade Technical Institute.**

Utah Trade Technical Institute at Provo shall be a state school and shall be under the management, control and supervision of the state board of education, which board shall prescribe the courses of study, employ the necessary supervisors, instructors and other employees and shall prescribe their qualifications; prescribe the entrance requirements and set the amount of the fees and tuition required of the students to said school.

Approved March 1, 1963.

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**CHAPTER 96**

S. B. No. 96.

(Passed March 14, 1963. In effect July 1, 1963.)

**TRANSFER OF SCHOOL EMPLOYEES' RETIREMENT**

**An Act Amending Section 53-29-6, Utah Code Annotated 1953, as Enacted by Chapter 20, Laws of Utah 1953, 1st Special Session, and as Amended by Chapters 110 and 111, Laws of Utah 1961, Relating to the Utah State School Employees' Retirement Act; Providing for Transferring the Administration of the Utah State School Employees' Retirement System and the Utah State School Employees' Retirement Fund from the Utah State School Employees' Retirement Board to**

**the Utah State Retirement Board, Created by S. B. No. 94, Laws of Utah 1963; Providing an Effective Date.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-29-6, Utah Code Annotated 1953, as enacted by Chapter 20, Laws of Utah 1953, 1st Special Session and as amended by Chapters 110 and 111, Laws of Utah 1961, is amended to read:

**53-29-6. Transferring Administration of School Employees' Retirement System.**

The retirement system and the Utah State School Employees' Retirement fund shall be managed and administered exclusively by the Utah State Retirement Board created by S. B. 94, Laws of Utah, 1963. Any and all references made in this act to a retirement board, or to the Utah State School Employees' Retirement Board, or an obvious variation thereof, shall be deemed to have been made to the Utah State Retirement Board.

The Utah state retirement board shall be the successor to and have all powers, duties and responsibilities of the retirement board heretofore in existence for the purpose of administering the Utah State school employees' retirement fund in conformance with the Utah State school employees' retirement act, except as otherwise provided by S. B. 94, Laws of Utah 1963.

The board shall retain a consulting actuary to perform such actuarial duties as may be necessary in the administration of the system, and to make a periodic investigation into the experience under a valuation of the system at least every six years; the fees for such valuation, together with other necessary actuarial services, shall be paid from the earnings of the fund.

The retirement board shall have the power and authority to hear and determine all facts pertaining to applications for benefits under the retirement system and all matters pertaining to the administration thereof. If it shall be impracticable for the board to determine from the records or other information available to it the length of service, compensation or age of any member, the board may estimate for the purpose of any determination required to be made by it, any such factor. Notwithstanding any decision of the board, a member may challenge the decision of the board and appeal such decision to the district court of the county at the seat of government.

The retirement board shall meet at least once every three months. The board may authorize its secretary, or a committee of its members, to perform routine acts such as retirement of members and fixing of retirement allowances necessary in the administration of the system in accordance with the provisions of this act and the rules and regulations adopted by the board. Acts of the secretary or committee shall be reported forthwith to members of the board and shall be subject to review and ratification, modification or reversal by the board at its next meeting. Modification or reversal by the board of any act of the secretary or committee shall be effective on the date fixed by the board, but no payment made prior to the board's action shall be affected thereby

except for such recovery as the board may direct from the beneficiary receiving such payment.

**Section 2. Effective Date.**

This act shall take effect July 1, 1963.

Approved March 18, 1963.

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**CHAPTER 97**

S. B. No. 85

(Passed February 20, 1963. In effect May 14, 1963)

**SCHOLARSHIPS AND LEAVES OF ABSENCE  
UNIVERSITY OF UTAH**

**An Act Amending Section 53-31-18, Utah Code Annotated 1953, Relating to Leaves of Absence for Holders of Normal Scholarships; Providing That the Board of Regents May Grant Leaves of Absence to Scholarship Holders.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-31-18, Utah Code Annotated 1953, is amended to read:

**53-31-18. Normal Scholarships.**

On or before the fifteenth day of September of each year appointments to normal scholarships shall be made by the state superintendent of public instruction on the nomination by the county or city district boards of education. Each county and city school district shall be entitled to at least one scholarship each three years. After the fifteenth day of September of each year appointments of normal scholarships may be made by the president of the university. Students who have been appointed to normal scholarships may be examined before admission to the school by or under the direction of the university faculty, and such students may be rejected, if found to be unqualified.

Holders of normal scholarships shall be required to declare their intention to complete the prescribed work of normal instruction for a degree, diploma or certificates, and after completion of such work to teach in the public schools of this state. The president of the university may grant leaves of absence to holders of normal scholarships for such terms as the board of regents authorizes and may appoint other incumbents during the absence on leaves of the regular holders. The president of the university may at any time cancel for neglect or incompetency the normal scholarship of any student, and he may require upon such cancellation the payment to the university of all fees abated by reason of the scholarship.

Approved February 25, 1963.

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**CHAPTER 98**

S. B. No. 18

(Passed February 5, 1963. In effect May 14, 1963)

**STATE MUSEUM OF NATURAL HISTORY**

**An Act Relating to the Creation of a State Museum of Natural History;**

**Providing for the Establishment of the Museum at the University of Utah.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. University of Utah to Accept Gifts.**

The University of Utah is hereby authorized to establish a State Museum of Natural History and to receive gifts, contributions and the development of or display in the museum.

Approved February 6, 1963.

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**CHAPTER 99**

H. B. No. 228.

(Passed March 8, 1963. In effect May 14, 1963.)

**LIBERAL ARTS DEGREE AT UTAH STATE UNIVERSITY**

**An Act Amending Sections 53-32-7 and 53-32-24, Utah Code Annotated 1953, Permitting Utah State University of Agriculture and Applied Science to Confer Degrees in Liberal Arts.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-32-7, Utah Code Annotated 1953, is amended to read:

**53-32-7. Authority to Confer Degrees.**

Utah State University of Agriculture and Applied Science may confer for similar or equal attainments degrees and testimonials similar to those conferred by land grant universities or colleges elsewhere.

**Section 2. Section Amended.**

Section 53-32-24, Utah Code Annotated 1953, is amended to read:

**53-32-24. General Enumeration.**

The courses of study in Utah State University of Agriculture and Applied Science shall comprise agriculture, horticulture, forestry, animal industry, veterinary science, domestic science and art, commerce, engineering, military science and tactics, mechanic arts and pedagogy, and the various arts and sciences. Utah State University of Agriculture and Applied Science may give courses for the preparation of teachers in the foregoing subjects such as to meet the certification requirements of the state board of education, but it shall not offer courses in the professions of law or medicine. The work of the university shall be arranged with special references to the liberal and practical education of the industrial classes in the several pursuits and possessions of life.

Approved March 18, 1963.

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**CHAPTER 100**

S. B. No. 66.

(Passed March 13, 1963. In effect May 14, 1963.)

**NONRESIDENT STUDENT FEES**

**An Act Amending Section 53-34-1, Utah Code Annotated 1953, as Amended by Chapters 106 and 107, Laws of Utah 1955, as Amended by Chapter 117, Laws of Utah 1961, Relating to Registration and Tuition Fees: Providing for an Increase in Tuition Fees and Repealing Section 53-33-8, Utah Code Annotated 1953, as Amended by Chapter**



105, Laws of Utah 1955, Section 53-34-3, Utah Code Annotated 1953, as Amended by Chapter 117, Laws of Utah 1961 and Section 53-34-4, Utah Code Annotated 1953.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-34-1, Utah Code Annotated 1953, as amended by Chapter 106 and 107, Laws of Utah 1955, as amended by Chapter 117, Laws of Utah 1961, is amended to read:

**53-34-1. Registration and Tuition Fees — Limit — Exception.**

(a) (1) The governing board of each institution of higher education shall review the schedule of fees and tuitions charged to the students and shall establish, within the limits defined by law, the fees and tuitions to be charged students.

(2) The per cent of the per capita cost per full-time equivalent student, both resident and nonresident, that shall constitute the minimum fee for educational and general purposes at each college or university shall be in accordance with the following scale; provided that in no instance shall the fee be less than \$100 per year for a resident student and \$200 per year for a nonresident student.

**SCALE FOR ASSESSMENT OF MINIMUM FEES**

Enrollment	Per cent of the cost per student during the previous biennium to be used in determining minimum fees for:	
	Resident Students	Nonresident Students
Below 400	14%	25%
400 — 799	15	30
800 —1999	16	35
2000—4999	18	40
5000—7999	19	42.5
8000 or more	20	45

(3) Each regular student enrolled in a state supported vocational school or technical institute whose domicile is in Utah shall be charged a fee for educational and general purposes which shall not be less than 10 per cent of the average annual per capita cost per full-time-equivalent student during the preceding biennium.

(4) Each regular student enrolled in a vocational school or technical institute whose domicile is not in Utah shall be charged a fee for educational and general purposes which shall not be less than 25 per cent of the average annual per capita cost per full-time-equivalent student during the preceding biennium.

(b) For the purposes of this act:

(1) Enrollment shall be the number of full-time-equivalent students as defined in the following paragraph.

(2) Full-time-equivalent students shall be that number obtained by dividing by 15 the total number of student credit hours in resident instruction for which students are registered as of the end of the third week of the fall term.

(3) A. The cost per full-time-equivalent student shall be the amount obtained by dividing the total expenditures for educational and general purposes during the previous biennium, less deductions provided in para-

graph B, by the number of full-time-equivalent students for the corresponding school years.

B. A deduction of 20 per cent of the total biennial expenditure for general administration and for plant operation and maintenance is allowed in computation of per capita costs for those institutions conducting organized research programs and activities for which separate appropriations are made.

(4) Expenditures for educational and general purposes shall be defined as all unrestricted operating funds that are available for any current purposes.

(5) A nonresident student is one whose domicile is not in the state of Utah.

(c) (1) The president, or director, of each institution may waive part or all of the fees for educational and general purposes in the case of meritorious or impecunious students whose domicile is in the state of Utah to an amount not exceeding 10 per cent of the total amount of the fees assessed for this purpose.

(2) The president, or director, of each institution may waive all or part of the difference between resident and nonresident fees in the case of meritorious graduate students and summer school students whose domicile is not in Utah.

(3) The meaning of the word, "domicile," for the purposes of this act, shall be determined by reference to the general law on the subject of domicile, except that the following rules shall be observed: A student cannot acquire a domicile in this state until he or she, or the parent or guardian, if the student is a minor, has lived in the state for a period of one year prior to registration in the public post-high school educational institutions. No person can acquire a domicile by living in the State of Utah, when such person lives in Utah merely for the purpose of attending or enabling a minor child to attend such institutions. The domicile of a minor shall be that of his father; in the event of the death of his father, that of his mother, in the event of death of both parents, that of the last deceased parent unless a guardian has been appointed. Letters of guardianship are not conclusive for purposes of determining domicile, within the meaning of this act.

(d) Notwithstanding any provisions of Chapter 34, Title 53, Utah Code Annotated 1953, public post-high school educational institutions shall upon request of the state board for vocational education partially or wholly exempt from the payment of registration and tuition fees required by law, students enrolled in said institutions making application for full-time or part-time vocational agriculture, or vocational trade and industrial, or business, or distributive, or vocational home economics course operating under the State of Utah plans for vocational education.

(e) Each person serving in the United States Armed Forces assigned to duty in Utah and members of the family of such persons who live in Utah shall be deemed residents for the purposes of this chapter.

## Section 2. Final Revision Date.

Any revision of minimum fees computed under this act shall be effective not later than July 1, 1965.

**Section 3. Sections Repealed.**

Section 53-33-8, Utah Code Annotated 1953, as amended by Chapter 105, Laws of Utah 1955, Section 53-34-3, Utah Code Annotated 1953, as amended by Chapter 117, Laws of Utah 1961 and Section 53-34-4, Utah Code Annotated 1953 are hereby repealed.

Approved March 18, 1963.

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**CHAPTER 101**

S. B. No. 116.

(Passed March 14, 1963. In effect May 14, 1963.)

**ANNUITIES FOR HIGHER EDUCATION**

**An Act Amending Section 53-35-1, Utah Code Annotated 1953, as Amended by Chapter 108, Laws of Utah 1955, and Chapter 118, Laws of Utah 1961, Relating to Authorization to the Governing Boards of Institutions of Higher Education to Assist Faculty Members and Employees in Acquiring Old-Age Annuities; Providing for Authorization to Contract with Faculty Members and Employees to Accept a Reduced Salary Upon Consideration that the Board will Contribute an Amount Equal to the Amount of the Salary Reduction Toward the Purchase of Old-Age Annuities in Order to Obtain the Deferred Federal Income Tax Treatment of Old-Age Annuities Offered by the Internal Revenue Code of 1954, as Amended.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-35-1, Utah Code Annotated 1953, as amended by Chapter 108, Laws of Utah, and Chapter 118, Laws of Utah 1961, is amended to read:

**53-35-1. Assistance to Teachers in Acquiring.**

(1) The board of regents of the University of Utah, the board of trustees of the Utah State University of Agriculture and Applied Science, the board of trustees of Weber State College, and the board of control of the state junior colleges are authorized and empowered under such rules and regulations as the several boards may prescribe, to assist the several faculties and employees in their respective institutions to purchase old-age annuities.

(2) Such assistance may include, but is not limited to, the purchase of old-age annuities which under the provisions of the federal Internal Revenue Code of 1954, as amended, are not currently taxable as income to the faculty member or full-time employee, and for this purpose any board may contract with an individual faculty member or individual employee that such member or employee shall receive a reduced salary and that in consideration thereof the board shall contribute toward the purchase of such old-age annuities an amount equal to the amount of the salary reduction.

(3) Any contribution by a board for the purchase of old-age annuities other than pursuant to an agreement authorized by subsection 53-35-1 (2) shall not exceed five per cent of the sum of the member's or employee's salary plus the amount contributed pursuant to such agreement.

Approved March 21, 1963.

**CHAPTER 102**

H. B. No. 236.

(Passed March 14, 1963. In effect May 14, 1963.)

**COMPOSITION OF BOARD OF GEOLOGICAL SURVEY**

**An Act Amending Section 53-36-1, Utah Code Annotated 1953, Relating to the Composition of the Advisory Board for the Utah Geological and Mineralogical Survey, Increasing the Possible Appointees to the Advisory Board.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-36-1, Utah Code Annotated 1953, is amended to read:

**53-36-1. Composition of Advisory Board for Utah Geological and Mineralogical Survey.**

All the rights, powers, and duties heretofore granted or conferred upon the Utah Geological and Mineralogical Survey, its governing board, and the department of publicity and industrial development in reference thereto, are transferred to and perpetuated in the State School of Mines and Mineral Industries of the University of Utah. To assist in attaining the objects of said survey, the board of regents of the University of Utah shall appoint an advisory board composed of, but not limited to, at least one representative from each of the following organizations and institutions: University of Utah, Utah State University of Agriculture and Applied Science, Utah Section of American Institute of Mining and Metallurgical Engineers, Utah Mining Association, Utah-Wyoming Coal Operators Association, United States Geological Survey, United States Bureau of Mines, Intermountain Association of Petroleum Geologists, and from such other agencies or industries as in the opinion of the board of regents of the University of Utah reflect the economic and scientific aspects of the mineral industry of the state. The members of said advisory board shall receive no compensation, but may be reimbursed by the university for all expenses actually incurred in the performance of their official duties.

Approved March 18, 1963.

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**CHAPTER 103**

H. B. No. 239.

(Passed March 14, 1963. In effect May 14, 1963.)

**FUNDS FOR UTAH GEOLOGICAL AND MINERALOGICAL SURVEY**

**An Act Amending Section 53-36-2, Utah Code Annotated 1953, Providing for Sources of Additional Funds for the Utah Geological and Mineralogical Survey.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-36-2, Utah Code Annotated 1953, is amended to read:

**53-36-2. Objects of Survey — Disposition of Income Survey Fund — Transfer of Funds to.**

Such survey shall have for its objects:

(1) The collection and distribution of reliable information regarding the mineral resources of the state.

(2) The survey of the geological formations of the state with special reference to their economic contents, values and use, such as: the ores of the various metals, coal, oil shale, hydrocarbons, oil, gas, industrial clays, cement materials, mineral waters and other surface and underground water supplies, mineral fertilizers, asphalt, bitumen, structural materials, roadmaking materials, their kind and availability; and the promotion of the marketing of the mineral products of the state.

(3) The investigation of the kind, amount and availability of the various mineral substances contained in state lands, with a view of the most effective and profitable administration of such lands for the state.

(4) The consideration of such other scientific and economic problems as, in the judgment of the board of regents, should come within the field of the survey.

(5) Co-operation with the Utah state bureaus dealing with related subjects, with the United States Geological Survey and with the United States Bureau of Mines, in their respective functions including field investigations, and the preparation, publication, and distribution of reports and bulletins embodying the results of the work of the survey.

(6) The preparation, publication, distribution, and sale of maps, reports and bulletins embodying the results of the work of the survey. The collection and establishment of exhibits of the mineral resources of Utah.

(7) Any income from the sale of maps and reports or from gifts from other sources for the survey shall be turned over to the state treasurer and credited by him to a fund to be known as the survey fund to be used under the direction of the director of the survey for publication of maps, bulletins or other reports of investigation of the geological and mineralogical survey. Any funds now deposited with the state treasurer under the provisions of section 34-0-4, Utah Code Annotated 1953, are hereby transferred to said survey fund.

(8) In addition to the funds that are available to the Utah Geological and Mineralogical Survey through subsection (7), the sources of funds for the maintenance and operation of the survey shall be from (a) a direct line item appropriation included in the budget for the University of Utah and (b) those funds specified in section 53-7-4.

Approved March 18, 1963.

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## CHAPTER 104

S. B. No. 35

(Passed February 20, 1963. In Effect May 14, 1963)

### LIBRARY BUILDING REVENUE BONDS

**An Act Amending Section 53-38-1, Utah Code Annotated 1953, as Amended by Chapter 109, Laws of Utah 1955, and by Chapter 119, Laws of Utah 1961, Providing That General Library Buildings Be Included Among the Types of Buildings for Which Institutions of Higher Learning May Issue Revenue Bonds for Purposes of Financing**

**the Cost of Construction, Additions, Remodeling, Furnishing, Maintaining, and Operating Such Buildings.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 53-38-1, Utah Code Annotated 1953, as amended by Chapter 109, Laws of Utah 1955, and by Chapter 119, Laws of Utah 1961, is amended to read:

**53-38-1. Construction of Buildings on Campus.**

That subject to and in accordance with the terms hereof, the board of regents of the University of Utah for and on behalf of the University of Utah and Carbon College, the board of trustees of Utah State University of Agriculture and Applied Science, for and on behalf of Utah State University of Agriculture and Applied Science, Snow College and the College of Southern Utah, also known as the branch of the Utah State University of Agriculture and Applied Science at Cedar City, the board of trustees of Weber State College for and on behalf of Weber State College, and the state board of education for and on behalf of Dixie College, are each authorized and empowered from time to time to set aside such portions of their respective campuses as may be necessary and suitable for the construction thereon of dormitories, kitchens, dining halls, auditoriums, student union buildings, field houses, stadiums, general library buildings, other self-liquidating projects, and other revenue producing buildings including additions to and remodeling of existing buildings used for such purposes and to construct such buildings or additions thereon and to equip, furnish, maintain and operate such buildings.

Approved February 26, 1963.

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**CHAPTER 105**

S. B. No. 196.

(Passed March 14, 1963. In effect May 14, 1963.)

**CONSTRUCTION LOANS FOR WEBER STATE COLLEGE**

**An Act Amending Section 53-38-6, Utah Code Annotated 1953, as Amended by Chapter 109, Laws of Utah 1955, and by Chapter 119, Laws of Utah 1961, and Section 53-38-15, Utah Code Annotated 1953, as Enacted by Chapter 120, Laws of Utah 1961, Relating to the Disposition and Use of Income Derived from Operation of Buildings; Providing for Changing the Name of "Weber College" to "Weber State College"; Providing for Authorized Loans to Pay for the Cost of Construction, Equipment and Furnishing of Buildings, and Including the Board of Trustees of Weber State College.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Section 53-38-6, Utah Code Annotated 1953, as amended by Chapter 109, Laws of Utah 1955, and Chapter 119, Laws of Utah 1961, and Section 53-38-15, Utah Code Annotated 1953, as enacted by Chapter 120, Laws of Utah 1961, are amended to read:

**53-38-6. Disposition and Use of Income Derived from Operation of Buildings—Payment of Principal and Interest of Bonds.**

That except as to revenues paid directly to a trustee under the provisions of subsection (6) of section 53-38-3 hereof, all income and revenues derived from the operation of the building shall be deposited as collected in a fund in a bank or trust company approved as a regular depository by the state depository board, to be applied solely to the payment of the principal of and interest on the bonds, and, to the extent so provided in the resolution authorizing the bonds, to the payment of the cost of maintaining and operating the building and the establishment of reserves for such purposes. As principal and interest become due from time to time, the state treasurer, the treasurer of the University of Utah, the treasurer of the Utah State University of Agriculture and Applied Science, or the treasurer of Weber State College shall, not less than fifteen days prior to the payment date, transmit to the paying agent for the bonds, money from said fund in an amount sufficient to pay the principal or interest so falling due. Said funds and the money therein is irrevocably pledged to such purposes.

**53-38-15. Loan Authorized to Pay for Cost of Construction, Equipment and Furnishing of Buildings—Notes or Other Evidence of Indebtedness and Mortgages—Agreement with Lending Institution.**

For the purpose of paying all or part of the cost of construction, equipment, and furnishing of any building or any addition to or remodeling thereof, constructed or to be constructed as a "self-liquidating project" under the provisions of this chapter, the state board of education, the board of regents of the University of Utah, the board of trustees of Utah State University of Agriculture and Applied Science, and/or the board of trustees of Weber State College, for which any building or addition to or remodeling thereof is to be constructed, furnished and equipped (which state board of education, board of regents or boards of trustees are hereinafter referred to as "the board") is authorized to borrow money on the credit of the income and revenues to be derived from the operation of the building, and from the imposition of student building fees, land grant interest, and net proceeds from proprietary activities or from sources other than by appropriations by the legislature of the State of Utah to such issuing institutions, and to evidence of indebtedness as it may deem appropriate, provided such note or other evidence of indebtedness shall specify on the face thereof that the same does not constitute a general obligation of the state of Utah; and further to secure the payment of such loan to mortgage the building and improvements and the land upon which the same is situated, including sufficient land for the reasonable use and occupancy thereof. Such note or other evidence of indebtedness may have all the qualities and inci-

dents of negotiable paper, and shall not be subject to taxation by the state of Utah, or by any county, municipality, or political subdivision therein. Said note or other evidence of indebtedness and mortgage may contain such additional provisions with respect to repayment out of the income and revenues to be derived from the operation of the building, from the imposition of student building fees, land grant interest, and net profits from proprietary activities, or from sources other than appropriations by the legislature of the state of Utah to such issuing institution as the board may consider necessary and proper.

The board may enter into such agreement as it deems necessary with the lending institution as to the use which will be made of any such building or addition, the operation, maintenance, and supervision of the same, the imposition of fees, charges and rentals for the use thereof, including the equipment contained therein, and the collection and disposition to be made of the proceeds of such fees, charges, and rentals, and in order to secure the prompt payment of principal and interest and to pay the cost of the maintenance and operation of the building or any addition thereto the board is vested with the same power and authority with respect to said indebtedness created under this section as it has in respect to the issuance of bonds under the other provisions of this chapter.

When any obligation owing to finance the cost of any building, improvement, or equipment, constructed or acquired under this section, shall have been fully paid as to principal and interest, the mortgage shall be satisfied and discharged. All buildings and additions to existing buildings so erected and the equipment therefor shall be exempt from taxation as long as the legal title thereto remains in the borrowing agency.

Approved March 19, 1963.

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## CHAPTER 106

S. B. No. 87

(Passed February 20, 1963. In Effect May 14, 1963)

### SCHOLARSHIPS AND LEAVES OF ABSENCE—WEBER STATE COLLEGE AND UTAH STATE UNIVERSITY

**An Act Amending Section 53-39-3, Utah Code Annotated 1953, as Enacted by Chapter 102, Laws of Utah 1955, Relating to Scholarships, Allowing Governing Boards of Colleges and of the Utah State University to Determine Extent of Leaves of Absence for Holders of Normal Scholarships.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 53-39-3, Utah Code Annotated 1953, as enacted by Chapter 102, Laws of Utah 1955, is amended to read:

#### **53-39-3. Appointment to Normal Scholarships.**

On or before the fifteenth day of September of each year appoint-



ments to normal scholarships shall be made by the state superintendent of public instruction on the nomination by the county or city district boards of education. After the fifteenth day of September of each year appointments of normal scholarships may be made by the president or director of the college and of the Utah State University. Students who have been appointed to normal scholarships may be examined before admission to the school by or under the direction of the college faculty, and such students may be rejected, if found to be unqualified.

Holders of normal scholarships shall be required to declare their intention to complete the prescribed work of normal instruction for a degree, diploma or certificate, and after completion of such work to teach in the public schools of this state. The president or director of the college and of the Utah State University may grant leaves of absence to holders of normal scholarships for such terms as the governing board may authorize and may appoint other incumbents during the absence on leaves of the regular holders. The president or director of the college may at any time cancel for neglect or incompetency the normal scholarship of any student, and he may require upon such cancellation the payment to the college of all fees abated by reason of the scholarship.

Approved February 25, 1963.

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## CHAPTER 107

S. B. No. 65

(Passed February 15, 1963. In effect May 14, 1963)

### CHANGE NAME OF WEBER COLLEGE

**An Act Amending Sections 53-43-1 and 53-43-2, Utah Code Annotated 1953, as Enacted by Chapter 115, Laws of Utah 1961, Providing for Changing the Name of Weber College to Weber State College.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Sections Amended.**

Sections 53-43-1 and 53-43-2, Utah Code Annotated 1953, as enacted by Chapter 115, Laws of Utah 1961, are amended to read:

#### **53-43-1. Weber State College—Definition.**

The term college as used in this chapter shall mean Weber State College. The term Weber College as used in all Utah Statutes shall mean Weber State College.

#### **53-43-2. Establishment and Creation of Weber State College.**

There is hereby established and created a state college known as Weber State College, and it is hereby constituted a body politic and corporate with all rights, immunities, and franchises necessary thereto. It may have and use a corporate seal, may sue and be sued and contract and be contracted with. It may take, hold, lease, sell and convey real and personal property as the interest of the college may require, and shall not be subject to the control of the state board of education in any manner.

Approved February 15, 1963.

## PUBLIC WELFARE

### CHAPTER 108

S. B. No. 55.

(Passed March 14, 1963. In effect May 14, 1963.)

#### WELFARE COMMISSION PROPERTY SALES

**An Act Amending Section 55-15-13, Utah Code Annotated 1953, as Enacted by Chapter 126, Laws of Utah 1961, Relating to the Sale of Property by the Public Welfare Commission; Providing for Approval of Sales of Property by the Governor Through the Director of Finance.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 55-15-13, Utah Code Annotated 1953, as enacted by Chapter 126, Laws of Utah 1961, is amended to read:

#### 55-15-13. Real or Personal Property — Sale by Welfare Commission.

The public welfare commission, with the approval of the governor through the director of finance, is authorized to sell on terms determined to be for the best interests of the state any real property or personal property owned by the department or any state institution under the direction of the commission and which is not needed by the department or institution.

Approved March 18, 1963.

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## REAL ESTATE

### CHAPTER 109

S. B. No. 43.

(Passed March 13, 1963. In effect May 14, 1963.)

#### MODEL MARKETABLE TITLE ACT

**An Act Relating to the Marketability of Real Estate Titles and Providing for the Extinguishment of Conflicting Claims After a Period of Forty Years.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Legal Capacity for Marketable Title.

Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for forty years or more, shall be deemed to have a marketable record title to such interest as defined in Section 8, subject only to the matters stated in Section 2. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than forty years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in

- (1) the person claiming such interest or
- (2) some other person from whom, by one or more conveyances or

other title transactions of record, such purported interest has become vested in the person claiming such interest with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

### **Section 2. Marketable Title Conditions.**

The marketable record title shall be subject to

(1) All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided, however, that a general reference in such muniments or any of them, to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such easement, use restriction or other interest.

(2) All interests preserved by the filing of proper notice or by possession by the same owner continuously for a period of forty years or more, in accordance with Section 4.

(3) The rights of any person arising from prescriptive use or a period of adverse possession or user, which was in whole or in part subsequent to the effective date of the root of title.

(4) Any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started; provided, however, that such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of Section 3.

(5) The exceptions stated in Section 6 as to rights of reversioners in leases, as to apparent easements and interests in the nature of easements, and as to interests of the United States.

### **Section 3. Voiding of Claims or Charges.**

Subject to the provisions of Section 2, the marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claim or charges, whatsoever, the existence of which depends upon any act, transaction, event or omission that occurred prior to the effective date of the root of title. All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether such interests, claims or charges are asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be void.

### **Section 4. Forty-Year Possession of Property—Preserving Title—Notices.**

(1) Any person claiming an interest in land may preserve and keep effective such interest by filing for record during the forty-year period immediately following the effective date of the root of title of such person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim. No disability

or lack of knowledge of any kind on the part of anyone shall suspend the running of the forty-year period. The notice may be filed for record by the claimant or by any other person acting in behalf of any claimant who is

- (a) under a disability,
- (b) unable to assert a claim on his own behalf, or
- (c) one of a class, but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

(2) If the same record owner of any possessory interest in land has been in possession of such land continuously for a period of forty years or more, during which period no title transaction with respect to such interest appears of record in his chain of title, and no notice has been filed by him or on his behalf as provided in Subsection (1), and such possession continues to the time when marketability is being determined, such period of possession shall be deemed equivalent to the filing of the notice immediately preceding the termination of the forty-year period described in Subsection (1).

#### **Section 5. To Record Instruments With County Recorder — Notice Index.**

To be effective and to be entitled to record, the notice referred to above shall contain an accurate and full description of all land affected by such notice which description shall be set forth in particular terms and not by general inclusions; but if the claim is founded upon a recorded instrument, then the description in the notice may be the same as that contained in the recorded instrument. The notice shall be filed for record in the registry of deeds of the county or counties where the land described therein is situated. The recorder of each county shall accept all such notices presented to him which describe land located in the county in which he serves and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded and each recorder shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing the notices in his office each recorder shall enter the notices under the grantee indexes of deeds under the names of the claimants appearing in the notices. Such notices shall also be indexed under the description of the real estate involved in a book set apart for that purpose to be known as the "Notice Index."

#### **Section 6. Application of Act—Easements or Interests.**

This act shall not be applied to bar any lessor or his successor as a reversioner of his right to possession on the expiration of any lease; or to bar or extinguish any easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use; or to bar or extinguish any water rights, whether evidenced by decrees, by certificates or appropriation, by diligence claims to the use of surface or underground water or by water users' claims filed in general determination proceedings; or to bar any right, title or interest of the United States, by reason of failure to file the notice herein required.

**Section 7. Statute of Limitation—Applicability.**

Nothing contained in this act shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as herein specifically provided, to affect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land.

**Section 8. Definitions.**

As used in this act:

(1) the words "marketable record title" mean a title of record as indicated in Section 1, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in Section 3.

(2) the word "records" includes probate and other official public records, as well as records in the registry of deeds.

(3) the word "recording", when applied to the official public records of a probate or other court, includes filing.

(4) the words "person dealing with land" include a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person seeking to acquire an estate or interest therein, or impose a lien thereon.

(5) the words "root of title" mean that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon such he relies as a basis for the marketability of his title, and which was the most recent to be recorded as or a date forty years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.

(6) the words "title transaction" mean any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, referee's, guardian's, executor's, administrator's, master in chancery's, or sheriff's deed, or decree of any court, as well as warranty deed, quitclaim deed, or mortgage.

**Section 9. Purpose of Act to Facilitate Transfer of Title.**

This act shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 1 of this act, subject only to such limitations as appear in Section 2 of this act.

**Section 10. Extending Effective Date of Act.**

If the forty-year period specified in this act shall have expired prior to two years after the effective date of this act, such period shall be extended two years after the effective date of this act.

Approved March 19, 1963.

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**CHAPTER 110**

S. B. No. 6

(Passed February 11, 1963. In effect May 14, 1963)

**TRUST DEEDS**

**An Act Amending Section 57-1-21, Utah Code Annotated 1953, as En-**

acted by Chapter 181, Laws of Utah 1961, Relating to Trustees of a Trust Deed; Providing for an Effective Date as to Certain Trusts.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 57-1-21, Utah Code Annotated 1953, as enacted by Chapter 181, Laws of Utah 1961, is amended to read:

**57-1-21. Trustees of Trust Deeds—Qualifications.**

(1) The trustee of a trust deed shall be:

(a) Any member of the Utah State bar,

(b) Any bank, building and loan association or savings and loan association authorized to do business in Utah under the laws of Utah or the United States,

(c) Any corporation authorized to conduct a trust business in Utah under the laws of Utah or the United States, or

(d) Any title insurance or abstract company authorized to do business in Utah under the laws of Utah.

Clauses (a), (b), (c) and (d) of this section shall not be applicable to a trustee of a trust deed existing prior to the effective date of this act, nor to any indenture supplemental thereto.

(2) The trustee of a trust deed shall not be the beneficiary therein unless the beneficiary is qualified to be a trustee under clause (b) or (c) of this section.

Approved February 11, 1963.

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**CHAPTER 111**

**CONDOMINIUM OWNERSHIP**

S. B. No. 5

(Passed February 20, 1963. In effect May 14, 1963)

**An Act Relating to Condominium Ownership of Property; Providing for Creation and Operation of Condominium Projects; Providing for Execution and Recording of Declaration of Property for Purposes of Condominium Ownership and Providing for Separate Assessment and Taxation of Individual Condominium Units.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Condominium Ownership Act.**

This Act shall be known and may be cited as the "Condominium Ownership Act."

**Section 2. Application of This Act.**

This act shall be applicable only to property which the sole owner or all the owners submit to the provisions of the act by duly executing and recording a declaration as provided in the act.

**Section 3. Definitions.**

As used in this act:

(1) the word "condominium" means the ownership of a single unit

in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property.

(2) the words "condominium project" mean a real estate condominium project; a plan or project whereby four or more apartments, rooms, office spaces, or other units in existing or proposed apartment, commercial or industrial buildings or structures are separately offered or proposed to be offered for sale.

(3) the word "property" means and includes the land, the building, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(4) the word "building" means a building, containing four or more units, or two or more buildings, with a total of four or more units for all such buildings, and comprising a part of the property.

(5) the words "common areas and facilities," unless otherwise provided in the declaration or lawful amendments thereto, mean and include:

(a) the land on which the building is located;

(b) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;

(c) the basements, yards, gardens, parking areas and storage spaces;

(d) the premises for lodging of janitors or persons in charge of the property;

(e) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) such community and commercial facilities as may be provided for in the declaration; and

(h) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(6) the words "limited common areas and facilities" mean and include those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.

(7) the word "unit" means a part of the property intended for any type of independent use, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building.

(8) the words "unit owner" mean the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration.

(9) the words "unit number" mean the number, letter or combination thereof designating the unit in the declaration and in the record of survey map.

(10) the words "majority" or "majority of the unit owners" unless otherwise provided in the declaration or lawful amendments thereto,

mean the owners of more than fifty percent in the aggregate in interest of the undivided ownership of the common areas and facilities.

(11) the words "association of unit owners" mean all of the unit owners acting as a group in accordance with the declaration and by-laws.

(12) the words "management committee" mean the committee as provided in the declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the property.

(13) the word "declaration" means the instrument by which the property is submitted to the provisions of this act, as it from time to time may be lawfully amended.

(14) the words "common expenses" mean and include:

(a) all sums lawfully assessed against the unit owners;

(b) expenses of administration, maintenance, repair or replacement of the common areas and facilities;

(c) expenses agreed upon as common expenses by the association of unit owners;

(d) expenses declared common expenses by provisions of this act, or by the declaration or the by-laws.

(15) the words "common profits", unless otherwise provided in the declaration or lawful amendments thereto, mean and include the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(16) the word "person" means individual, corporation, partnership, association, trustee or other legal entity.

(17) the words "record", "recording", "recorded", and "recorder" shall have the meanings stated in Chapter 3 of Title 57, Utah Code Annotated 1953.

(18) the words "record of survey map" mean a plat or plats of survey of the property and of all units in the property submitted to the provisions of this act, which may consist of a three-dimensional, horizontal and vertical delineation of all such units.

#### **Section 4. Status of the Units.**

Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and may be inherited or devised by Will and be subject to all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of all other units, and the separate units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable.

#### **Section 5. Joint Tenancies or Tenancies in Common.**

Any unit may be held and owned by more than one person as joint tenants, or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the State of Utah.

#### **Section 6. Ownership of Units.**

Each unit owner shall be entitled to the exclusive ownership and possession of his unit.



**Section 7. Common Areas and Facilities.**

(1) Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the unit in relation to the value of the property.

(2) The percentage of the undivided interest of each unit owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended declaration duly recorded. The percentage of the undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(3) The common areas and facilities shall remain undivided and no unit owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this act as provided in Sections 22 and 31. Any covenants to the contrary shall be null and void.

(4) Each unit owner may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other unit owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereon shall be carried out only as provided in this act or in the declaration or by-laws.

(6) The manager or management committee shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities or for making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit or units.

**Section 8. Compliance With Covenants, By-Laws and/or House Rules and Administrative Provisions.**

Each unit owner shall comply strictly with the covenants, conditions and restrictions as set forth in the declaration or in the deed to his unit, and with the by-laws and/or house rules and with the administrative rules and regulations drafted pursuant thereto, as either of the same may be lawfully amended from time to time, and failure to comply shall be ground for an action to recover sums due for damages or injunctive relief or both, maintainable by the manager or management committee on behalf of the unit owners, or in a proper case, by an aggrieved unit owner.

**Section 9. Certain Work Prohibited.**

No unit owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other unit owners being first obtained.

**Section 10. Contents of Declaration.**

The owner or developer of a condominium project shall, prior to the conveyance of any unit, record a declaration containing covenants, conditions and restrictions relating to the project, which shall be enforceable equitable servitudes where reasonable, and shall run with the land. Such servitudes unless otherwise provided, may be enforced by any unit owner, and his successors in interest, and may contain, among other things, the following particulars:

- (1) a description of the land on which the building and improvements are or are to be located.
- (2) a description of the building, stating the number of stories and basements and the number of units and the principal materials of which it is or is to be constructed.
- (3) the unit number of each unit, and a statement of its location, approximate areas, number of rooms, and immediate common area to which it has access, and any other data necessary to its proper identification.
- (4) a description of the common areas and facilities.
- (5) a description of the limited common areas and facilities, if any, stating to which units such use is reserved.
- (6) the value of the property and of each unit, and the percentage of undivided interest in the common areas and facilities appurtenant to each unit and its owner for all purposes, including voting.
- (7) a statement of the purposes for which the building and each of its units are intended and restricted as to use.
- (8) the name of a person to receive service of process, in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city or county in which the building is located.
- (9) provisions, not inconsistent with this act, as to the percentage of votes by the unit owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property, or of any other question.
- (10) the method by which the declaration may be amended consistent with the provisions of this act.
- (11) any further matters in connection with the property which the person or persons executing the declaration may deem desirable to set forth consistent with this act.

**Section 11. Contents of Deeds of Units.**

Deeds of units shall include the following particulars:

- (1) a description of the land as provided in Section 10, including the book and page or entry number and date of recording of the declaration.
- (2) the unit number of the unit and any other data necessary for its proper identification.
- (3) the percentage of undivided interest appertaining to the unit in the common areas and facilities.
- (4) any further particulars which the grantor and grantee may deem desirable to set forth consistent with the declaration and this act.

**Section 12. Recording.**

The declaration, any amendment, any instrument by which the provisions of this act may be waived, and every instrument affecting the property or any unit shall be entitled to be recorded. Neither the declaration nor any amendment thereof shall be valid unless recorded.

(2) In addition to the records and indexes now required to be maintained by the recorder, the recorder shall maintain an index whereby the record of each condominium project contains a reference to the declaration, each conveyance of, lien against, and all other instruments referring to a unit affected by such declaration, and the record of each conveyance of, lien against, and all other instruments referring to a unit shall contain a reference to the declaration of the property of which the unit is a part.

**Section 13. Record of Survey Map to Be Recorded.**

Simultaneously with the recording of the declaration there shall be recorded a standard size, original linen (21" x 31") record of survey map as defined in Section 3 (18), with 6 $\frac{1}{4}$ " x 1 $\frac{1}{2}$ " recording information block, which map shall be made by a registered Utah Land Surveyor and shall set forth (1) a description of the surface of the land included within the project, including all angular and linear data along the exterior boundaries of the property; (2) the linear measurement and location, with reference to the exterior boundaries, of the building or buildings located on said property; (3) diagrammatic floor plans of the building or buildings built or to be built thereon in sufficient detail to identify each unit, including its identifying number or symbol the official datum elevations of the finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the finished or unfinished interior surfaces of the perimeter walls, and the lateral extensions, of every unit in the building; and (4) a certificate consenting to the recordation of such record of survey map pursuant to this act, signed and acknowledged by the record owner of such property. Every unit shall be identified on the record of survey map by a distinguishing number or other symbol.

In interpreting the record of survey map or any deed or other instrument affecting a building or unit, the boundaries of the building or unit constructed or reconstructed in substantial accordance with the record of survey map shall be conclusively presumed to be the actual boundaries rather than the description expressed in the record of survey map, regardless of the settling or lateral movement of the building and regardless of minor variance between boundaries shown on the record of survey map and those of the building or unit.

**Section 14. Description in Deeds.**

Every deed, lease, mortgage or other instrument may legally describe a unit by its identifying number or symbol as designated in the declaration or as shown on the record of survey map, and every such description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of ownership in the common areas and facilities even though the same is not expressly mentioned or described.

**Section 15. By-Laws.**

The administration of every property shall be governed by by-laws, which may either be embodied in the declaration or in a separate instrument, a true copy of which shall be appended to and recorded with the declaration. No modification or amendment of the declaration or by-laws shall be valid unless the same is set forth in an amendment and such amendment is recorded.

**Section 16. Contents of By-Laws.**

The by-laws may provide for the following:

(1) the establishment of a management committee, the number of persons constituting the committee and the method of selecting the members of the committee; the powers and duties of the management committee; and whether or not the management committee may engage the services of a manager.

(2) the method of calling meetings of the unit owners; what percentage of the unit owners shall constitute a quorum, and be authorized to transact business.

(3) the maintenance, repair and replacement of the common areas and facilities and payment therefor.

(4) the manner of collecting from the unit owners their share of the common expenses.

(5) the designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.

(6) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.

(7) such restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners.

(8) the percentage of votes required to amend the by-laws.

(9) other provisions as may be deemed necessary for the administration of the property consistent with this act.

**Section 17. Books of Receipts and Expenditures; Availability For Examination.**

The manager or management committee shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Records and the vouchers authorizing the payments involved shall be available for examination by the unit owners at convenient hours of week days.

**Section 18. Blanket Mortgages and Other Blanket Liens Affecting a Unit at Time of First Conveyance.**

At the time of the first conveyance of each unit, every mortgage and other lien affecting such unit, including the percentage of undivided interest of the unit in the common areas and facilities shall have been paid and satisfied of record, or the unit being conveyed and its percentage

of undivided interest in the common areas and facilities shall have been released therefrom by partial release duly recorded.

**Section 19. Liens Against Units; Removal From Lien; Effect of Part Payment.**

(1) Subsequent to recording the declaration as provided in this act, and while the property remains subject to this act, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; provided that no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien pursuant to the lien law against the unit of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the unit owners, the manager or management committee in accordance with this act, the declaration or by-laws or the house rules, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the lien law against each of the units.

(2) In the event a lien against two or more units becomes effective, the unit owners of the separate units may remove their unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit from the lien by payment of the fractional or proportional amount attributable to each of the units affected. Such individual payment shall be computed by reference to the percentages appearing in the declaration. Subsequent to any payment, discharge or other satisfaction, the unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free and clear of the lien so paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

**Section 20. Lien For Non Payment of Common Expenses.**

It shall be the duty of every unit owner to pay his proportionate share of the common expenses. Payment shall be in such amounts and at such times as determined by the management committee in accordance with the terms of the declaration or the by-laws.

The amount of common expenses assessed against each unit shall be a debt of the owner at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. If any unit owner shall fail or refuse to make

any payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of the owner in the property, and upon the recording of notice thereof by the manager or management committee shall be a lien upon the unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except only

(1) tax and special assessment liens on the unit in favor of any assessing unit, and special district, and

(2) encumbrances on the interest of the unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

The manager or management committee shall, upon the written request of any unit owner or any encumbrancer or prospective encumbrancer of a unit, upon payment of a reasonable fee not to exceed \$10.00, issue to a person or persons requesting, a written statement setting forth the unpaid common expenses with respect to the unit covered by the request, which shall be conclusive upon the remaining unit owners and upon the manager and management committee in favor of all persons who rely thereon in good faith. Unless the request for a statement of indebtedness shall be complied with within ten days, all unpaid common expenses which became due prior to the date of the making of such request shall be subordinate to the lien held by the person requesting the statement. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

The lien for nonpayment of common expenses may be enforced by sale or foreclosure of the unit owner's interest by the manager or management committee, sale or foreclosure to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the unit owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees. If so provided in the declaration or by-laws, in the case of foreclosure, the owner shall be required to pay a reasonable rental for the unit, and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

Unless otherwise provided in the declaration, the manager or management committee shall have power to bid in the unit at foreclosure or other sale and to hold, lease, mortgage and convey the unit.

#### **Section 21. Acquisition Through Tax Deed or Foreclosure of Liens.**

In the event any person shall acquire, through foreclosure, exercise of power of sale, or other enforcement of any lien, or by tax deed, the interest of any unit owner, the interest acquired shall be subject to all the provisions of this act and to the covenants, conditions and restrictions contained in the declaration, the record of survey map, the by-laws, the house rules, or any deed affecting the interest then in force.

#### **Section 22. Removal From Provisions of This Act.**

(1) All of the unit owners may remove a property from the pro-

visions of this act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the units consent or agree by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

(2) Upon removal of the property from the provisions of this act, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

**Section 23. Removal No Bar to Subsequent Resubmission.**

The removal provided for in Section 22 shall not bar the subsequent resubmission of the property to the provisions of this act.

**Section 24. Common Profits and Expenses.**

Unless otherwise provided in the declaration or lawful amendments thereto, the common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the percentage of their undivided interest in the common areas and facilities.

**Section 25. Joint and Several Liability of Grantor and Grantee For Unpaid Common Expenses.**

In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the manager or management committee setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

**Section 26. Waiver of Use of Common Areas and Facilities; Abandonment of Unit.**

No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

**Section 27. Separate Taxation.**

(1) Each unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law including but not limited to ad valorem levies and special assessments. Neither the building or buildings, the property nor any of the common areas and facilities shall be deemed to be a parcel.

(2) No forfeiture or sale of the improvements or the property as a whole for delinquent real estate taxes, special assessments, or charges shall ever divest or in anywise affect the title to an individual unit so long as the real estate taxes or duly levied share of the assessments and charges on the individual unit are currently paid.

(3) Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the submission of the property to the provisions of this act.

#### **Section 28. Exemption From Rules of Property.**

The rule of property known as the rule against perpetuities and the rule of property known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this act, or of any declaration, by-laws or other document executed in accordance with this act.

#### **Section 29. Insurance.**

The manager, management committee, or association of unit owners, if required by the declaration, by-laws or by a majority of the unit owners, or at the request of a mortgagee having a first mortgage of record covering a unit, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Insurance coverage shall be written on the property in the name of the manager, management committee, or association of unit owners, as trustee for each of the unit owners in the percentages established in the declaration. Premiums on insurance shall be common expenses. Provision for insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit.

#### **Section 30. Repair or Reconstruction—Application of Insurance Proceeds.**

In case of fire or any other disaster, the insurance proceeds, if sufficient to reconstruct the building, shall be applied to such reconstruction. Reconstruction of the building, as used in this section and Section 31 of this act, means restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before.

#### **Section 31. Disposition of Property Where Insurance Proceeds Are Insufficient For Reconstruction.**

Unless otherwise provided in the declaration or by-laws, if the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the manager or management committee, using proceeds of insurance, if any, on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the building is destroyed or substantially damaged and if the unit owners, by a vote of at least three-fourths of such unit owners, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the manager or manage-



ment committee shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice:

(1) the property shall be deemed to be owned in common by the unit owners;

(2) the undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common elements;

(3) any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property; and

(4) the property shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each unit owner.

### **Section 32. Sale of Property.**

Unless otherwise provided in the declaration or by-laws, and notwithstanding the provisions of Sections 30 and 31, the unit owners may, by an affirmative vote of at least three-fourths of such unit owners, at a meeting of unit owners duly called for such purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all unit owners and it shall thereupon become the duty of every unit owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

### **Section 33. Actions.**

Without limiting the rights of any unit owner, actions may be brought by the manager or management committee, in either case in the discretion of the management committee, on behalf of two or more of the unit owners, as their respective interest may appear, with respect to any cause of action relating to the common areas and facilities or more than one unit. Service of process on two or more unit owners in any action relating to the common areas and facilities or more than one unit may be made on the person designated in the declaration to receive service of process.

### **Section 34. Personal Application.**

(1) All unit owners, tenants of such owners, employees of owners and tenants, or any other person who may in any manner use the property or any part thereof submitted to the provisions of this act shall be subject to this act and to the declaration and by-laws adopted pursuant to the provisions of this act.

(2) All agreements, decisions and determinations lawfully made by the manager, management committee or by the association of unit owners in accordance with this act, the declaration or by-laws, shall be deemed to be binding on all unit owners.

**Section 35. Effect of Other Laws.**

The provisions of this act shall be in addition and supplemental to all other provisions of law, statutory or judicially declared, provided that wherever the application of the provisions of this act conflict with the application of such other provisions, this act shall prevail.

**Section 36. Severability.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

**Section 37. Effective Date of Act.**

This act shall take effect upon approval.

Approved February 26, 1963.

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**CHAPTER 112****DISCHARGE OF MORTGAGE**

H. B. No. 46

(Passed February 25, 1963. In Effect May 14, 1963)

**An Act Repealing Section 57-3-6, Utah Code Annotated 1953, relating to the Certificate of Discharge of a Mortgage.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Repealed.**

Section 57-3-6, Utah Code Annotated 1953, is hereby repealed.

Approved March 1, 1963.

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**REGISTRATION****CHAPTER 113**

H. B. No. 52

(Passed February 7, 1963. In Effect May 14, 1963)

**DIRECTOR OF REGISTRATIONS**

**An Act Amending Section 58-1-3, Utah Code Annotated 1953, Relating to Qualifications of Director of Registration.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-1-3 Utah Code Annotated 1953, is amended to read:

**58-1-3. Qualifications.**

The director of registration shall not be affiliated either as teacher, officer or stockholder with any college or school of any of the professions, trades, or occupations which are or may be subject to the department of registration.

Approved February 8, 1963.

## CHAPTER 114

H. B. No. 92.

(Passed March 8, 1963. In effect May 14, 1963.)

## COSMETOLOGIST ACT

**An Act Amending Sections 58-1-5, Utah Code Annotated 1953, as Amended by Chapters 95, 96, 97 and 105, Laws of Utah 1953, Chapters 115, Laws of Utah 1957, Chapters 100, 101 and 102, Laws of Utah 1959, and Chapters 133 and 134, Laws of Utah 1961; Sections 58-11-2, 58-11-7, 58-11-11, 58-11-12, and 58-11-15, Utah Code Annotated 1953, as Amended by Chapter 134, Laws of Utah 1961; Sections 58-11-8, 58-11-9, 58-11-10, 58-11-17, and 58-11-18, Utah Code Annotated 1953, as Enacted by Chapter 134, Laws of Utah 1961, Relating to Licensing of and Regulation of Cosmetologists; Providing for Medical Certificates; Examinations; Instructors License; Membership of the Board; and Defining Duties of the Department of Registration.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-1-5, Utah Code Annotated 1953, as amended by Chapters 95, 96, 97 and 105, Laws of Utah 1953, Chapter 115, Laws of Utah 1957, Chapters 100, 101, and 102, Laws of Utah 1959, and Chapters 133 and 134, Laws of Utah 1961, is amended to read:

**58-1-5. Exercise of Departmental Functions by Director—Assistance of Representative Committees for Profession—Trades or Occupations—Number and Qualifications of Members.**

The functions of the department of registration shall be exercised by the director of registration under the supervision of the commission of the department of business regulation and, when so provided, in collaboration with and with the assistance of representative committees of the several professions, trades and occupations as follows:

- (1) For accountants, a committee of three competent public accountants.
- (2) For architects, a committee of three architects.
- (3) For barbers, a committee of three persons, citizens of the United States who shall have practiced barbering for at least five years.
- (4) For chiropody, a committee of three members.
- (5) For chiropractors, a committee of three chiropractors; chiropractic is defined as the science of palpating and adjusting the articulation of the spinal column by the hands only.
- (6) For dentists, a committee of five persons; but no member of such committee shall be a member of the faculty of any dental college or dental department of any medical college or have a financial interest in any such college.
- (7) For funeral directors, embalmers and apprentice embalmers, a committee of three licensed funeral directors or embalmers; provided, however, that each member of such committee shall have had a minimum of five years' experience in the preparation and disposition of dead hu-

man bodies, and in the practice of embalming, immediately preceding their appointment.

(8) For cosmetologists and electrologists, a board of five licensed cosmetologists.

(9) For practitioners of medicine and surgery in all branches thereof, a committee of five persons each of whom shall be a licensed practitioner of medicine and surgery in all branches thereof in this state and a graduate of a chartered medical college of recognized standing.

(10) For practitioners in the treatment of human ailments in accordance with the tenets of the professional school, college or institution, recognized by the department of registration, of which the applicant is a graduate as designated in his application for license, including the practice of obstetrics and with the use of drugs or medicine, but without operative surgery, except operative minor surgery, a committee of five members to be designated by the director. Notwithstanding the provisions of Section 58-1-6, Utah Code Annotated 1963, one shall be licensed to practice medicine and surgery in all branches thereof, two shall be practitioners of naturopathy licensed to practice the treatment of human ailments without the use of drugs or medicine and without operative surgery, one shall be a citizen who is not licensed in any healing art and one shall be a member of the staff of the University of Utah medical school.

(11) For practitioners of naturopathy, a committee of three members, each of whom shall be a graduate of a school of naturopathy of standing recognized by the department of registration.

(12) For practitioners of physical therapy, a committee of three members, each of whom shall be a licensed practitioner of physical therapy in this state and a graduate of an approved school of physical therapy.

(13) For graduate registered nurses and licensed practical nurses a committee of four registered nurses and two licensed practical nurses and one registered nurse who is either an instructor in practical nursing or a director of a practical nurse school.

(14) For osteopathic physicians or osteopathic physicians and surgeons, a committee of three members each of whom shall be a graduate of a chartered college of osteopathy of recognized standing.

(15) For optometrists, a committee of three persons.

(16) For pharmacists, a committee of five pharmacists to be designated as Utah state board of pharmacy.

(17) For veterinarians, a committee of three veterinarians each of whom shall be a graduate of a college or university of standing recognized by the department of registration.

(18) For plumbers, a committee of five persons.

(19) For sanitarians, a committee of five persons, each of whom shall have had a minimum of five years' experience as a sanitarian.

(20) For persons engaged in, conducting, operating or maintaining in any home, residence or domiciliary facility the business of a nursing home, maternity home, the refuge care of maintenance of the needy, the care of the aged or infirm, for two or more non-related individuals,

a committee of five certified operators, each of whom shall have had a minimum of five years' experience as a home operator.

(21) For psychologists, a committee of five psychologists.

### Section 2. Sections Amended.

Sections 58-11-2, 58-11-7, 58-11-8, 58-11-9, 58-11-10, 58-11-11, 58-11-12, 58-11-15, 58-11-17, and 58-11-18, Utah Code Annotated 1953 as amended by Chapter 11, Laws of Utah 1961, are amended to read:

#### 58-11-2. License Requirements—Cosmetologists—Manicurists—Electrologists—Instructors in Schools of Cosmetology—Cosmetology Shops of Beauty Salons—Schools of Cosmetology—Apprentices.

1. Produce satisfactory evidence of good moral character and temperate habits.

2. Be free from contagious or infectious diseases and upon successfully passing the examination submit to the department a medical certificate made on forms supplied by the department.

3. Have studied and served as a registered apprentice under the supervision of licensed cosmetologist for not less than fifteen months or must be a graduate of a school of cosmetology approved by the department, requiring a course of not less than fifteen hundred hours over a period of not less than nine months.

4. Pass a satisfactory examination conducted by the board as to the knowledge of the occupation.

5. Upon successfully passing the examination relinquish student or apprentice license and pay required license fee for new license.

6. Have submitted to the department under oath an application for license on the form supplied by the department.

B. An applicant to receive a license to practice as a manicurist must:

1. Produce satisfactory evidence of good moral character and temperate habits.

2. Be free from contagious or infectious disease and upon successfully passing the examination submit to the department a medical certificate on forms supplied by the department.

3. Have completed a manicure course of at least five hundred hours of training in a school of cosmetology licensed under this act.

4. Have successfully passed an examination conducted by the board.

5. Upon successfully passing an examination for a manicurist have relinquished his student license and pay stipulated fee for a new license.

C. An applicant to receive a license to practice as an electrologist must:

1. Produce satisfactory evidence of good moral character and temperate habits.

2. Be free from contagious or infectious disease and upon successfully passing the examination submit to the department a medical certificate on forms supplied by the department.

3. Have completed a course in electrology of at least 300 hours of training in a school of cosmetology having one or more instructors who are licensed as electrologists.

4. Have successfully passed an examination conducted by the board.

5. Upon successfully passing an examination for electrologist have relinquished his student license and have paid stipulated fee for a new license.

D. A person is entitled to receive a license to instruct in a school of cosmetology who possesses the following qualifications:

1. Is the holder of a license as a cosmetologist issued by this state and has,

(a) Completed at least six months teacher's training instructions in cosmetology in a registered school of cosmetology, or

(b) At least one year's experience as an active practicing cosmetologist or beauty culturist supplemented by not less than three months teacher's training in cosmetology in a registered school of cosmetology, or

(c) A current license as cosmetologist and shall have been actively engaged in the practice of cosmetology or beauty culture for at least three years immediately prior to making application to the board for an instructor's license.

2. Is a high school graduate or has equivalent knowledge and training as determined by examination prescribed by the board and approved by the department.

3. Has successfully passed an examination conducted by the board.

4. Pays the stipulated examination fee prior to taking any examination by the board.

A person must be licensed as an instructor of electrology and cosmetology before he is qualified to teach the same.

An instructor may practice cosmetology, electrology, or manicuring in a shop of cosmetology or beauty salon, if so licensed.

A person who has failed to pass an examination for any instructor's license is eligible to retake an examination only if the applicant pursues an additional course of study in a school of cosmetology of not less than three hundred hours to be completed within a period of two months.

Every two years each instructor must have two weeks of teacher training as a prerequisite to renewal of the instructor's license, provided, that an instructor's license may be renewed within a five year period upon satisfactory completion of not less than 250 hours of teacher training.

A person who has completed a course of training for an instructor's license is entitled to assist a licensed instructor in the instruction of other students in the school and shall be known as a student instructor until the next examination.

E. A cosmetology shop or beauty salon or shop is entitled to receive a license to operate as such if it meets and maintains the following requirements:

1. Files with the department an application in writing on forms supplied by the department and accompanied by the license fee.

2. Is located in a building or structure occupying either the whole thereof or separated from the remainder of the building by a solid partition which may have a door.

3. Maintains hot and cold running water and a rest room for the use of its patrons.

4. Complies with the rules and regulations approved by the department.

5. The applicant for a salon license, if an individual, as well as the officers, managers and directors thereof if a corporation or partnership, shall be persons of good moral character and temperate habits.

6. Such shop will not be used for sleeping or residential purposes or for any purpose not related to cosmetology.

F. A school of cosmetology is entitled to receive a license to operate at such and to teach cosmetology, manicuring and electrology, if it fulfills and maintains the following requirements

1. Files with the department an application in writing on forms supplied by the department and accompanied by the required fee.

2. Requires that each student enrolling be a good moral character and submit a medical certificate and two recent photographs of the student.

3. Offers a course of instruction approved by the department of registration with instructors licensed in all fields of instruction specified by the school.

4. Has on its staff a consultant, licensed by this state to practice medicine.

5. Employs at least one instructor for each 20 full-time students or fraction thereof.

6. Has a full-time instructor present during all instruction.

7. Has and maintains sufficient beauty equipment and other equipment as outlined and approved by the department, to train properly all the students enrolled in its course in the use, function and operation of the beauty equipment which is at the time in use in the fields of cosmetology.

8. It provides:

(a) Separate lecture classrooms.

(b) Locker space for students.

(c) An area appropriate in size for the placement of the training equipment as outlined and approved by the department.

(d) Separate rest room facilities for male and female students.

9. No student may render any clinical services to patrons for fees until said student or apprentice has completed a minimum of two hundred hours of approved training.

10. No instructor or student instructor shall be permitted to practice cosmetology on the public in the school other than that part of practical work which shall pertain directly to the teaching of practical subjects to students.

11. Any such school that shall enroll student instructors, shall not have at any one time more than one such student instructor for each licensed instructor actively engaged in such school. Said student instructor may not substitute for full time instructor to meet the requirements of paragraph five of this section.

12. Each school shall display, as approved by the department, in a conspicuous place within the clinic area of the school a sign which shall

read as follows: ALL SERVICES IN THIS SCHOOL PERFORMED BY STUDENTS WHO ARE IN TRAINING AS COSMETOLOGISTS.

13. No school shall pay monies to any of its students either directly or indirectly for clinical services. This prohibition does not apply to tuition scholarships.

14. Before a student is entitled to a certificate of graduation, the student shall complete a full school course of fifteen hundred hours of instruction in cosmetology to be completed within not less than nine months and successfully passes the school examinations in all phases of cosmetology.

15. Complies with the rules and regulations approved by the department.

16. No part of any area used for school purposes shall be used at any time for residential, sleeping or cooking purposes, and there shall be a separate entrance to a school if the school is located in any building or structure used also for residential or eating purposes; and no school shall have a combined operation of a school and a shop of cosmetology.

17. Furnish to the department and maintain in force a bond in the penal sum of five thousand dollars running in favor of the state with corporate surety authorized to do business in this state and conditioned that the school licensed under this act shall continue to offer to its students its complete course of instruction required under this chapter to completion of the course, in default of which the full amount of the tuition paid by the student shall be refunded.

G. The licensing of apprentices shall be in accordance with the following requirements:

1. The department shall issue statements of standards to guide applicants in determining general fitness and aptitude for qualification as cosmetologists.

2. Any person qualifying to train an apprentice in cosmetology must have been licensed as a cosmetologist for five years and shall provide evidence that the instruction prescribed by the department will be given over a fifteen month period in a licensed establishment in which all occupations of cosmetology, except electrology, are practiced.

3. After 350 hours of uncompensated time and the making of satisfactory progress in cosmetology the apprentice shall be classified as a junior cosmetologist, and shall be compensated under the approved apprentice program.

4. Licenses shall be issued by the department of registration.

#### **58-11-7. Admission From Other State.**

Every person licensed in another state who shall have practiced any one or more of the classified occupations for eighteen months or longer in such state or states under such license who shall have graduated from a school in another state recognized by the department shall be entitled to apply for examination in qualifying occupations without first becoming an apprentice or a student.

#### **58-11-8. Examination—Manner of Conducting.**

The board, under the direction of the department, shall conduct ex-



aminations required under this chapter in the following manner :

1. No less than every three months at such times and places as determined by the board.

2. Shall conduct both practical and written examinations that shall cover such subject matters and practical demonstrations as the board deems necessary properly to test the knowledge and skill of the applicant.

3. No board member shall give any part of the examination to students from the school at which he has been an instructor, school owner or manager during the 12 months preceding the examination. Such applicants shall be examined by the remaining member or members of such remaining members and such licensed cosmetologist or cosmetologists as the board may employ for the purposes of examining or assisting in examining such applicants.

4. In case of failure to appear at an examination, except for sickness duly attested by a legally qualified physician, or other acceptable excuse presented at the time, said applicant's examination fee shall be forfeited.

5. If a student, apprentice or manicurist shall fail to pass an examination, the applicant shall continue to be licensed as a student or apprentice until the next regular examination. Then he shall again take such examination, and if he fails, he shall continue to be licensed as a student or apprentice until the next examination. If he again fails, he shall be required to take three additional months training in cosmetology, manicuring or electrology followed by his final taking of the examination. No apprentice shall be licensed for a total of more than three years, and his student or apprentice license shall be good for a period of one year.

6. Instructor examinations are to be given by a special examining committee comprised of the board and assisted by a qualified teacher trainer or educator selected by the board. This additional person shall examine the person's ability to teach and use teaching aids and devices. Failure to pass may be followed by re-taking examinations as in the preceding section.

**58-11-9. Licenses — Insurance — Renewal — Restoration — Expiration  
While Serving in Armed Forces—Continuation of Current License—  
Display—Duplicate.**

1. The department of registration shall issue a license to all applicants qualifying therefor under this act. Licenses are non-transferable and shall expire Dec. 31 of each year.

2. Each applicant desiring to continue to operate or to serve under an issued license may renew the license each year by paying to the department the renewal fee prescribed in Section 58-11-11 and submitting a satisfactory medical certificate to the department, if an individual, or by officers and managers actively engaged in the operation of the cosmetology shop, if a corporation or partnership, as requested by the department.

3. A license which has expired and has not been renewed, as provided in paragraph 2 of this section, may be restored upon payment of the restoration fee as provided in Section 58-11-11 and submitting a satis-

factory medical certificate to the department as required in paragraph 2 of this section. A license which is in default for more than one year cannot be restored, but the former license holder may apply as an original applicant.

4. An individual license holder whose license has expired while he was serving in the armed forces of the United States may have his license renewed during his period of service or within six months thereafter at no additional fee upon furnishing a medical certificate to the department as required in paragraph 2 of this section.

5. Licenses issued and in force and effect under Title 58, Chapter 11, Utah Code Annotated 1953, when this chapter takes effect shall continue in force and effect until the time specified in the licenses of renewal and shall thereafter be subject to the expiration, renewal, restoration, suspension or revocation provision of this chapter.

6. Every individual holder of a license shall display his license and picture in a conspicuous place adjacent to or near his work chair or booth, and every school or place of cosmetology shall conspicuously display its license in its place of operation.

7. If a license is lost by the holder thereof, the department shall issue a duplicate license upon receiving from the licensee a verified and satisfactory statement that the license is lost, together with a photograph of applicant and the required fee.

**58-11-10. State Board of Cosmetology—Appointment Terms and Qualification of Members — Removal of Members — Chairman Meeting—Salary—Employment of Inspector—Power and Duties of Board.**

There shall be a state board of cosmetology which shall consist of five members appointed by the department from among persons recommended by responsible groups in the industry which shall include two cosmetologists, neither of which shall be representatives of any cosmetology school, two representatives from cosmetology schools, and one member from the industry at large. Members of the board shall be appointed two for one year, two for two years and one for three years, as specified by the department. Thereafter, the terms shall be for three years. An appointment made to fill a vacancy occurring other than by expiration of a term shall be for the unexpired portion of the term of such board member. The board shall be non-partisan.

2. Each member of the board shall be a person who has been licensed and actively practicing in this state either as a cosmetologist or beauty culturist, or an instructor in cosmetology or beauty culture for a period of at least five of the seven years immediately preceding his appointment, and shall have a high school education or its equivalent in training and experience.

3. The department may remove a member of the board for incompetency, disability, immorality or for any abuse of his official powers or duties or for any good cause shown and shall fill any vacancy thus created by an appointment within thirty days thereafter.

4. The board shall select a chairman from among the members who

shall preside at meetings of the board and shall act as the chief officer of the board, except as in this chapter otherwise specified.

5. The board shall hold annual meetings on the second Monday of January of each year in Salt Lake City, at which time the board shall select its chairman as provided in this chapter. The board shall hold other meetings from time to time and at such places as shall be designated in the call therefor which meetings may be held upon call of the chairman of the board or a majority of its members pursuant to reasonable notice thereof sent to each member.

6. Each member of the board shall receive a per diem salary not to exceed \$15 per day. Travel expense shall comply with regulations of other state officers.

7. The department shall employ one or more full-time inspectors, and one or more part-time investigators and clerical help necessary to carry out the provisions of the chapter.

8. The board shall:

a. Provide for the conduct of examination for applicants in a public place with equipment supplied by the department. When examinations are held at a school or shop the department shall reimburse the school or shop for reasonable expense for the use of facilities in the conduct of examinations. Examinations shall be conducted at alternate places to the extent possible.

b. Prepare and conduct all examinations for applications for licenses under this chapter.

c. Make and maintain a record of its acts and proceedings.

d. Cooperate with the department in maintaining a register of all licenses issued and registered under this chapter, which register shall include the following information:

1. The names and residence addresses of all persons licensed under this chapter.

2. The names and business addresses of all shops and schools of cosmetology licensed under this chapter.

3. The date of issuance and number of all issued licenses.

4. The dates of inspections and investigations made by the department and the statistical or other information pertaining to such inspections or investigations.

e. Keep the records of the board open to public inspection at all reasonable times.

f. Cooperate with other state agencies interested in maintaining health, sanitation and training.

g. Recommend to the department such rules and regulations as may be necessary for the administration of this chapter.

9. The department shall:

a. Promulgate rules and regulations as may be necessary for the administration of this chapter, including rules and regulations recommended by the board as approved by the department.

b. Enforce this chapter and rules and regulations promulgated hereunder.

**58-11-11. Fees**

Fees shall be paid by the respective applicants for licenses as follows:

Cosmetology shop or beauty salon, original license	
or annual renewals .....	\$ 3.00
Restoring expired license for Cosmetology	
Shop (Beauty Salon) .....	5.00
School of Cosmetology, original registration .....	100.00
School of Cosmetology, annual renewal .....	10.00
Cosmetologist, original license .....	10.00
Cosmetologist, annual license .....	3.00
Restoring expired license for Cosmetologist .....	5.00
Manicurist, original license .....	5.00
Manicurist, annual renewal .....	3.00
Restoring expired license for Manicurist .....	5.00
Electrologist, original license .....	5.00
Electrologist, annual renewal .....	3.00
Apprentice or student, registration fee .....	3.00
Apprentice or student, renewal fee .....	3.00
Instructor, annual renewal .....	3.00
Student instructor, registration fee .....	5.00
Student instructor, renewal fee .....	3.00
Temporary permit .....	3.00
Transient permit .....	3.00

**EXAMINATIONS:**

As a cosmetologist .....	10.00
As an instructor (including original license) .....	20.00
As an electrologist .....	10.00
As a manicurist .....	5.00
Re-examination fee for all occupations .....	2.50

**58-11-12. Definitions.**

In this law, unless the context otherwise requires:

1. "Board" means the board of cosmetology.
2. "Cosmetology" means any one or a combination of any of the following practices when performed upon the scalp, face, neck, shoulders, chest, back, arms or hands of persons for cosmetic purposes only:
  - (a) Massaging, cleansing, stimulating, manipulating, exercising, beautifying, or applying oils, creams, antiseptics, clays, lotions, or other preparations, either by hand or by mechanical or electrical appliances.
  - (b) Styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating the hair of the head of a person.
  - (c) Cutting, clipping or trimming the hair of women or girls only by the use of scissors, shears, clippers or other appliances.
  - (d) Arching eyebrows, or tinting eyebrows and eyelashes.
  - (e) Removing superfluous hair from the face, neck, shoulders or arms of a person by the use of depilatories.
  - (f) Cleansing, dressing, or polishing the nails of a person referred to in this chapter as manicuring.

3. "Cosmetology shop" means a place, shop or establishment in which cosmetology is practiced.

4. "Cosmetologist" means one who practices cosmetology as defined under this law.

5. An "electrologist" is any person who engages for compensation in removing superfluous hair by the use of electricity from the face of any person.

6. "Graduate" means a person who has completed successfully the required course of study offered by a school of cosmetology.

7. "Instructor" means a person licensed to teach in a school of cosmetology.

8. "License" means the privilege granted by this law and evidenced by a certificate issued by the board to the applicant therefor who is entitled thereto by complying with the requirements provided by this law.

9. "Manicurist" means one who cleans, massages hands and arms and dresses or polishes nails of persons.

10. "Medical Certificate" means a certificate from a person duly licensed to practice medicine certifying that the person in question has been examined by him not more than ninety days prior to the date of application for a license under this law, except that no person shall be required to submit more than one medical certificate except as requested by the department and that such person is free from any contagious, infectious or communicable disease.

11. "School of cosmetology" means a school teaching cosmetology and licensed as such under this law.

12. "Student" means any person enrolled and pursuing a course of study in a school on cosmetology.

13. An "Apprentice" is a person who is engaged in learning within a cosmetology shop under the immediate supervision of a licensed cosmetologist.

14. "Student Instructor" means a cosmetologist who is receiving instruction in teacher's training in a licensed school of cosmetology under direct supervision of a licensed instructor.

15. "Department" means department of registration.

#### **58-11-15. Unprofessional Conduct.**

The words "unprofessional conduct" as relating to cosmetologists and electrologists are hereby defined to include:

- (1) Habitual intemperance or excessive use of narcotics.
- (2) Practicing as a cosmetologist or electrologist while having a contagious or infectious disease.
- (3) Gross incompetency or malpractice.
- (4) Extortion or overcharging.
- (5) Keeping a shop or school, its furnishings, tools, utensils, linen or appliances in an unsanitary condition.
- (6) Failing to display cards and permits as herein provided.
- (7) Using any advertising which will in any way deceive the public.
- (8) Conviction of a felony.
- (9) Immorality.

(10) Wilfully making a false statement on which the board relies or acts.

(11) Ceasing to have any qualification required under this act to obtain or to continue in force a license.

The department shall not issue or renew, and may suspend or revoke, a license already issued, for any one or more of the above mentioned.

**58-11-17. Violation—Misdemeanor—Penalty.**

A. It is unlawful without an appropriate license issued under this chapter to:

1. Practice cosmetology for compensation.
2. Own, manage, operate, or control a school of cosmetology.
3. Own, manage, operate, or control a cosmetology shop.
4. Teach in a school of cosmetology.
5. Practice manicuring.

B. It is unlawful for any person who owns, manages, or controls a cosmetology school and a cosmetology shop:

1. To operate at the same location or establishment a cosmetology school and a cosmetology shop.

2. To operate a cosmetology shop without at all times having a licensed cosmetologist present and in charge thereof.

3. To operate a cosmetology school without at all times having a licensed instructor present and in charge thereof.

4. To practice cosmetology in any place other than in a licensed establishment as provided in this chapter except when a licensed cosmetologist is requested by a convalescing customer without solicitation to go to a place other than a licensed establishment.

5. To obtain or attempt to obtain a license by the use of money, other than the required fee, or any other thing of value or by any fraudulent misrepresentation.

6. For a cosmetology school to pay monies to its students, directly or indirectly for clinical services.

7. To violate any section or part of this chapter required to be done by a licensee.

8. To continue any practice or activity authorized by this chapter by any person while he has an infectious, contagious, or communicable disease.

9. For an instructor to render cosmetology services in a school of cosmetology except such services as are directly incidental to instruction of students.

10. To do anything prohibited by this chapter or any part thereof.

C. Commission of any of the acts prohibited as provided in subsections A and B, or any violations of this chapter, or violation of any act prohibited by this chapter is a misdemeanor punishable by a fine of not less than one hundred nor more than three hundred dollars, or by imprisonment in the county jail not to exceed thirty days or both.

D. Regardless of any penalties provided in this chapter and as additional remedy, the district courts are vested with jurisdictions to restrain and enjoin any violation of the requirements of this chapter as nuisances

per se, or otherwise, and the department, the attorney general or any county attorney or any other person may institute proceedings in equity for the purpose of obtaining equitable relief against violations of any provisions of this chapter. Any person damaged by any violation of this chapter shall also be entitled to actual damages sustained by reason thereof.

**58-11-18. Investigation and Inspection by Board—Filing and Service of Complaints—Hearings, How Conducted—Finding of Board.**

A. The department may make investigations and conduct inspections of all places or establishments licensed under this chapter and hold hearings to determine whether a license issued under this chapter should be revoked or suspended. Any inspector or other employee of the department, the attorney general, or the county attorney who has cause to believe that a person holding a license under this chapter is guilty of any conduct set forth as grounds for a revocation or suspension of a license may file with the department a complaint against such person setting forth the facts constituting the alleged wrongful conduct. A copy of the complaint shall be forwarded by registered or certified mail, within five days after filing with the department to the person charged with wrongful conduct together with a notice of the time and place of hearing which shall not be less than twenty days after the mailing of the notice.

B. Within ten days after receipt of the copy of the complaint, the person charged shall file an answer with the department specifically admitting or denying each material allegation of the complaint. The accused person shall be entitled to be present in person, to present witnesses and to be represented by his own counsel. The attorney general shall be sent promptly a copy of the complaint and any answer or other pleading filed in the matter and shall represent the department. The department may, with approval of the attorney general, employ other counsel and pay reasonable fees therefor. The department may take depositions, compel attendance of witnesses and issue subpoenas which may be served by any person authorized by law to serve subpoenas issued out of the district courts, and make due return of service thereof. Witnesses shall be entitled to receive fees and mileage on the same basis as is provided by law for attendance in the district courts except witness fees and mileage need not be tendered in advance. The chairman of the department, or any other member thereof designated by the department, shall preside at each hearing.

C. Upon conclusion of the hearing, as provided in this section, or not later than fifteen days thereafter, the department shall make and enter upon its records a finding either suspending, revoking or continuing in effect the license under inquiry and shall mail a copy thereof by certified or registered mail to the defendant.

Approved March 11, 1963.

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**CHAPTER 115**

H. B. No. 77.

(Passed March 8, 1963. In effect May 14, 1963.)

**PER DIEM OF LICENSING COMMITTEE**

**An Act Amending Section 58-1-6, Utah Code Annotated 1953, Relating to the Director of Registration and Appointment of Committee Members of Representative Committees Provided for Under the Act, Their Qualifications, Terms of Office and Per Diem.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-1-6, Utah Code Annotated 1953, is amended to read:

**58-1-6. Committee—Appointment—Qualifications—Terms—Per Diem.**

The director of registration shall designate the members of the said representative committees provided for in 58-1-5. In designating members of such committees he shall give due consideration to recommendations by members of the respective professions, trades and occupations and by organizations therein. Each member of a committee must have had a license to practice in this state for a period of five years immediately prior to his appointment and be in good standing in the profession, trade or occupation for which appointed. The names of all persons so designated shall be submitted to the governor for confirmation or rejection. In the appointment of the committees provided for in section 58-1-5, the term of office of each individual member shall be the number of years represented by the number of members comprising the committee to which he is appointed, provided that the first member appointed to each such committee after this act becomes effective shall serve for the period of one year, the second for two years, the third for three years, the fourth for four years and the fifth for five years, and provided, further, that in addition to all other qualifications provided by law, each member shall have been a resident for a period of three years, and shall be domiciled within the state of Utah.

Each member of the committees so designated shall receive \$15 for every day or portion thereof actually spent in the performance of his duties and his necessary traveling and hotel expenses actually incurred in the discharge of such duties.

The term of office of each member now serving on the several committees provided for in section 58-1-5, as amended, shall terminate upon the effective date of this act, and the new members shall be appointed, as herein provided for immediately thereafter.

Approved March 9, 1963.

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**CHAPTER 116**

H. B. No. 58

(Passed February 19, 1963. In effect May 14, 1963)

**FEEES OF DEPARTMENT OF REGISTRATION**

**An Act Relating to the Collection and Affixing of Fees by the Depart-**



**ment of Registration; Creating a Fund to Be Known as the Department of Registration Fund, Restricting the Use Thereof, and Prescribing the Duties of the State Treasurer in Reference Thereto; Providing for the Department of Registration to Affix Fees for Professions, Trades, and Occupations, When Said Fees Are Not Otherwise Provided by Law; and Repealing Section 58-1-21, Utah Code Annotated 1953, as Amended by Chapter 97, Laws of Utah 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Creating Department of Registration Fund.**

The purpose of this act is to safeguard the public health and safety and promote the public welfare by creating a department of registration fund which shall be restricted in its use to the supervision and administration of the professions, trades, and occupations under the jurisdiction of the department of registration, and to the enforcement of the law and regulations thereunder, pertaining to said professions, trades and occupations.

**Section 2. Fees to Be Used by Department.**

All fees collected by the department of registration shall be paid over to the state treasurer who shall credit the sums so collected to a fund to be known as the department of registration fund, which fund is hereby created. The monies paid into said fund shall be drawn upon for the payment of salaries and other expenses of the department of registration incurred in enforcing and administering Title 58, Utah Code Annotated 1953, amendments thereto, and regulations thereunder. All warrants drawn against the department of registration fund shall be upon vouchers issued and signed by the director of registration. All monies in excess of sixty-thousand dollars (\$60,000.00) remaining in said fund at the end of any biennial fiscal period for fees collected by the department covering any biennial fiscal period shall be transferred to the general fund.

**Section 3. Department to Fix Fees.**

The department of registration shall fix the amount of the following fees, and collect the same, when not otherwise provided by law:

(a) Any fee for an examination; provided, the amount so fixed for such fee shall not exceed \$50.00.

(b) Any fee for a license, certificate, permit, student card, or apprentice card; provided, the amount so fixed for such fee shall not exceed \$50.00.

(c) Any fee for the renewal of a license, certificate, permit, student card, or apprentice card; provided, the amount so fixed for such renewal fee shall not exceed \$10.00.

**Section 4. Department to Prepare Budget.**

The department of registration shall prepare and submit to the governor, to be included in his budget to be submitted to the legislature, a budget of the requirements for salaries and wages, office expense, travel, equipment, repairs and contingent expenses to be paid from the department of registration fund in carrying out the provisions of law for the biennium next following the convening of the legislature.

**Section 5. Section Repealed.**

Section 58-1-21, Utah Code Annotated 1953, as amended by Chapter 97, Laws of Utah 1953, is hereby repealed.

Approved February 20, 1963.

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**CHAPTER 117**

H. B. No. 69

(Passed February 19, 1963. In effect May 14, 1963)

**BARBER LICENSING FEES**

**An Act Amending Section 58-4-4, Utah Code Annotated 1953, Establishing Fees for a License to Practice Barbering.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-4-4, Utah Code Annotated 1953, is amended to read:

**58-4-4. Fees.**

Fees shall be paid by the respective applicants as follows:

For examination to determine one's fitness to practice barbering, \$10.

For a license to practice barbering in this state, \$5.

For a license to practice barbering, without examination, \$10.

For the registration of any barber school, \$50.

For the registration of a barber shop, \$1.

For the examination to determine one's fitness to teach barbering in this state, \$25.

For an apprentice card, \$5.

For an apprentice examination, \$5.

For a student's registration card, \$5.

For an annual renewal of a teacher's certificate, \$5.

For each additional examination for an applicant, \$5.

For the annual renewal of barber, student and apprentice cards, \$3, for the annual renewal for a barber shop certificate, \$3.

Approved February 20, 1963.

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**CHAPTER 118**

H. B. No. 72

(Passed February 19, 1963. In effect May 14, 1963)

**CHIROPODISTS FEES**

**An Act Amending Section 58-5-9, Utah Code Annotated 1953, Establishing Fees for a License to Practice Chiropractic.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-5-9, Utah Code Annotated 1953, is amended to read:

**58-5-9. Fees.**

Fees shall be paid by applicants as follows:

For a license as a registered chiroprapist, \$25.

For a renewal of a license, \$10.

For a reciprocal license, \$50.

Approved February 20, 1963.

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## CHAPTER 119

H. B. No. 78.

(Passed March 1, 1963. In effect May 14, 1963.)

### DENTAL HYGIENISTS' FEES

**An Act Amending Section 58-8-11, Utah Code Annotated 1953, Providing for an Annual Registration Fee for Dental Hygienists; Requiring Information Pertaining to Practice; Providing for Suspension for Failure to Comply with Law and Manner of Reinstatement; Requiring the Display of License; and Establishing Procedure and Grounds for Revoking a License.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 58-8-11, Utah Code, Annotated 1953, is amended to read:

#### **58-8-11. Annual Registration Fee—Furnishing Information—Suspension or Revocation of License for Non-Compliance—Reinstatement—Display and Duration of License—Additional Grounds for Revocation.**

All dental hygienists practicing in this state shall on or before January 1 of each year pay to the department of registration a registration fee of six dollars and shall furnish such information as the department may require regarding their location and the name of the licensed dentist or dentists under whose supervision they practice. The license of any dental hygienist who neglects to pay the annual registration fee as herein provided, or furnish the information herein required may be suspended or revoked by the department, but the department may in its discretion reinstate a delinquent licensee upon the payment of a fee of ten dollars. The license of a dental hygienist shall at all times be exhibited in a conspicuous place in the room in which such dental hygienist practices. All licenses to practice as a dental hygienist in the state of Utah shall remain in force until the annual license fee becomes due and thereafter so long as the licensee complies with the provisions of this act, but not otherwise; provided, however, that the department may, after hearing, revoke the license issued to any person under the provisions hereof for any of the following causes:

- (a) Physical or mental incompetence to practice her profession.
- (b) Fraud or misrepresentation in securing a license.
- (c) Gross immorality.
- (d) The habitual use of intoxicating liquor or drugs to such an extent as to render her unfit for practice.

Approved March 5, 1963.

## CHAPTER 120

H. B. No. 74.

(Passed March 8, 1963. In effect May 14, 1963.)

**NURSING SCHOOL BOARD OF REVIEW**

**An Act Amending Section 58-14-6.1, Utah Code Annotated 1953, as Enacted by Chapter 103, Laws of Utah 1953, Providing for the Nursing School Accreditation Board of Review: the Manner of Its Appointment and Compensation; and Designating Its Powers and Duties.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-14-6.1, Utah Code Annotated 1953, as enacted by chapter 103, Laws of Utah 1953, is amended to read:

**58-14-6.1 Nursing School Accreditation Board of Review—Members—Designations and Conformations—Expenses—Appeals From Decision of Committee—Power and Duties.**

A board to be known as the Nursing School Accreditation Board of Review is hereby created. The board shall be composed of the following persons: the chairman of the business regulation commission, the attorney general, one licensed medical doctor who is a member of the Utah State Medical Association, one director of a hospital having not fewer than 100 daily average bed patients who is a member of the Utah Hospital Association, one person who is an educational administrator in the field of higher education, one person having at least three years experience in the field of nursing education who is a member of the Utah State Nurses Association and of the Utah League of Nursing, and one person who is a member of the Women's Legislative Council.

The members of the board shall serve for a term of three years and they shall be designated by the director in the manner hereinafter provided.

Within 30 days after this act goes into effect, and thereafter within 30 days after any vacancy occurs, the names of the persons designated by the director shall be submitted to the governor for confirmation or rejection. In designating such members, the director shall give due consideration to recommendations made by each of the organizations referred to in this section of persons from the respective organizations who are eligible for appointment to the board and, in the case of the educational administrator in the field of higher education, the director shall give due consideration to the recommendations of the state board of education.

The members of the board shall receive \$15 per day for each day actually engaged in the work of the board and shall receive the actual and necessary expenses incurred by them in the performance of their duties.

It shall be the duty of the board to hear and determine appeals from decisions of the committee coming within the purview of this chapter and relating to the accreditation or discreditation of institutions conducting schools of nursing or courses for the training of practical nurses.

The board shall have the power to administer oaths, issue subpoenas for witnesses, compel the production of papers, books and documents, and to make a record of all evidence adduced at any hearing before it.

Approved March 9, 1963.

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## CHAPTER 121

H. B. No. 168.

(Passed March 14, 1963. In effect May 14, 1963.)

### PRACTICE OF NURSING

**An Act to Provide for the Regulations of the Practice of Nursing; to Provide for a State Board of Nursing; to Define the Powers and Duties or the Board Including Licensure of Practitioners of Nursing and Establishment of Standards for Educational Programs in Preparation for Nursing Practice, and to Prescribe Penalties for Violations of this Act; and Repealing Sections 58-14-1, 58-14-2, 58-14-4, 58-14-6, 58-14-8, and 58-14-11, Utah Code Annotated 1953, Section 58-14-3, Utah Code Annotated 1953, as Amended by Chapter 100, Laws of Utah 1953, Section 58-14-5, Utah Code Annotated 1953, as Amended by Chapter 101, Laws of Utah 1953, Section 58-14-7, Utah Code Annotated 1953, as Amended by Chapter 16, Laws of Utah 1955, Section 58-14-9, Utah Code Annotated 1953, as Amended by Chapter 104, Laws of Utah 1953, Section 58-14-10, Utah Code Annotated 1953, as Amended by Chapter 102, Laws of Utah 1953, and Section 58-14-6.1, Utah Code Annotated 1953, as Amended by Chapter 103, Laws of Utah 1953; and Amending Section 58-1-5, Utah Code Annotated 1953, as Amended by Chapters 95, 96, 97 and 105, Laws of Utah 1953, Chapter 115, Laws of Utah 1957, Chapters 100, 101 and 102, Laws of Utah 1959, and Chapters 133 and 134, Laws of Utah 1961.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Nurse Practice Act.**

This act shall be known and may be cited as the "Nurse Practice Act."

#### **Section 2. Purpose of Act.**

The purpose of this act is to safeguard life and health and to promote the public interest and welfare. In order to accomplish this, any person practicing or offering to practice professional nursing or practical nursing after the effective date of this act, within the state of Utah for compensation, shall before entering upon such practice be licensed as hereinafter provided. After the effective date of this act it shall be unlawful for any person not so licensed to practice professional or practical nursing in this state or to use any sign, card or device to indicate that such person is a professional, registered nurse or a licensed practical nurse.

#### **Section 3. Administration and Enforcement.**

The general provisions of Title 58, Utah Code Annotated 1953, as

amended, shall be applicable to the administration and enforcement of this act insofar as they are not in conflict herewith.

#### Section 4. Definitions.

When used in this act:

(1) The term "commission" means the commission of business regulation of the state of Utah.

(2) The term "department" means the department of registration within the department of business regulation of the State of Utah.

(3) The term "director" means the director of registration of the department of registration of the state of Utah.

(4) The term "board" means the state board of nursing.

(5) The term "practice of professional nursing" means the performance for compensation or personal profit of any act in the observation, nursing care or counseling of the ill, injured or infirm, or in the maintenance of health or the prevention of illness of others, or in the supervision and teaching of other personnel to perform any of such acts or in the administration of medicines or treatment as prescribed by a licensed physician, a licensed dentist or other licensed medical practitioner, or the performance of any service requiring substantial specialized judgment and skill in the treatment of such persons, based on knowledge of principles of biological, physical and social sciences. The foregoing shall not be deemed to authorize acts of diagnosis or the prescription of therapeutic or corrective measures.

(6) The term "practice of practical nursing" means the performance for compensation of acts in the care of the ill, injured or infirm under the direction of a registered nurse, a licensed physician, a licensed dentist, or other licensed medical practitioner, by one having the substantial specialized skill, judgment and knowledge required in practical nursing.

(7) The term "accredited nursing education program" means the course of study prescribed by the faculty of a school of nursing and approved by the board and certified to by a letter from the director.

#### Section 5. State Board of Nursing—Terms—Per Diem.

There is hereby created a state board of nursing which shall be composed of four registered nurses, two licensed practical nurses and one registered nurse who is either an instructor in practical nursing or a director of a practical nurse school. The board members shall be designated by the director and confirmed by the governor. In designating such members he shall, in the case of registered nurses, give due consideration to the recommendations made by the Utah State Nurses Association, and, in the case of the licensed practical nurses, he shall give due consideration to recommendations made by the Licensed Practical Nurses Association of Utah. The term of office shall be three years provided; however, that of those first appointed under this act, two of the registered nurses and one of the practical nurses shall be appointed for a period of one year, and one of the registered nurses and the registered nurse who is either an instructor in practical nursing or a director of a practical nurse school shall be appointed for a period of two years, and one of the practical nurses and one of the registered nurses shall be appointed for a period of three years.

The term of office of each member now serving on the committee as provided for in Section 58-1-5, Utah Code Annotated 1953, shall terminate upon the effective date of this act and the members of the board shall be appointed as herein provided immediately thereafter.

The commission may remove from office any board member for neglect of duty, incompetence or unprofessional conduct.

Each member of the board shall receive \$15 for every day or portion thereof actually spent in the performance of his or her duties and his or her necessary traveling and subsistence expenses actually incurred in the discharge of such duties.

### **Section 6. Qualifications of Board Members.**

a. The registered nurse members of the board shall be citizens of the United States and residents of Utah. They shall be in good physical and mental health and shall possess the following additional qualifications:

(1) Be a graduate of a state accredited educational program for the preparation of practitioners of professional nursing; and

(2) Be a graduate of a recognized college with a major in a field of nursing.

(3) Have had at least three years experience immediately preceding appointment in nursing administration or teaching in an institution having an educational program to prepare practitioners of nursing.

b. The licensed practical nurse members of the board shall be citizens of the United States and residents of Utah. They shall be in good physical and mental health and shall possess the following additional qualifications:

(1) Be duly licensed as a licensed practical nurse in the state of Utah.

(2) Be a graduate of a state accredited school for the preparation of licensed practical nurses.

(3) Be a graduate of an approved high school or the equivalent thereof.

(4) Have actively participated for a period of not less than three years in his or her nursing organization.

(5) Shall have been actively engaged in nursing for a period of three years immediately preceding his or her appointment.

c. Before entering upon his or her duties, each board member shall file with the director an oath of office.

### **Section 7. Powers and Duties of Board.**

a. The board shall meet annually in the month of January to elect from its members a chairman and a secretary. It may hold such other special meetings as it may deem necessary. A majority of the board including one such officer shall constitute a quorum at any meeting.

b. The board is authorized to:

(1) Adopt and from time to time revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this act.

- (2) Recommend to the department minimum standards for educational programs preparing persons for licensure under this act.
- (3) Provide for surveys of such programs every three years and at such other times as it may deem necessary.
- (4) Recommend accreditation by the department of such programs as meet the minimum standard requirements.
- (5) Recommend to the department the denial of or the withdrawal from accreditation of educational programs for failure to meet the prescribed minimum standard requirements.
- (6) Examine and recommend for licensure duly qualified applicants.
- (7) Make an annual report to the director.
- (8) Recommend to the department a qualified person, who shall not be a member of the board, to serve as nursing consultant. The nursing consultant shall be appointed by the department.

#### Section 8. Nursing Consultant.

The nursing consultant shall meet all the qualifications for registered nurse board members and shall in addition have at least five years experience, immediately preceding appointment, in teaching in or administration of a program for preparing practitioners of nursing.

#### Section 9. Requirements—Permits—Fees—Effective Dates.

a. An applicant for a license to practice professional nursing shall submit to the department a written, verified statement that the applicant:

- (1) Is of good physical and mental health.
- (2) Is of good moral character.
- (3) Has completed an approved high school education or the equivalent thereof, as determined by the board.
- (4) Has completed a state accredited professional nursing education program.

b. The applicant shall pass a written examination in such subjects as the board may determine. The department shall determine the time and place for the examination. Upon successfully passing such examination, the department shall issue to the applicant a license to practice professional nursing as a registered nurse.

c. A temporary permit to practice professional nursing as a registered nurse within the state of Utah may be granted for a period not exceeding four months:

- (1) To an applicant who is duly licensed to practice professional nursing in another state; or
- (2) To a recent graduate of any approved school of nursing who in the opinion of the board meets all requirements for licensure except the passing of the examination or completion of formal proof of qualifications for licensure without examination.

d. The department shall collect, in advance, fees as follows:

- (1) Application for license as a registered nurse: \$20.
- (2) Re-examination: \$10.00.
- (3) Letter of certification or each firm issued to meet written requests: \$1.00.



- (4) Application for a temporary permit: \$3.00.
- (5) Annual renewal: \$4.00.
- (6) Application for reinstatement, after revocation or expiration for non-payment of renewal fees: \$10.00, plus all annual renewal fees during the period of revocation or expiration.
- (7) Proctoring: \$15.00.

e. Any person who holds a license to practice professional nursing in this state shall have the right to use the title "registered nurse" and the abbreviation "R. N.". No other person shall assume such title or use such abbreviation or any other words, letters, signs, or devices to indicate that the person using the same is a registered nurse.

f. Any person holding a license or certificate of registration to practice nursing as a registered nurse heretofore issued by the department which is valid on the effective date of this act shall thereafter be deemed to be licensed as a registered nurse.

#### **Section 10. Application — Licensed Professional Nurse — Fees.**

a. An applicant for a license to practice as a licensed practical nurse shall submit to the board a verified statement that the applicant:

- (1) Is of good physical and mental health.
- (2) Is of good moral character.
- (3) Has completed at least two years of high school or its equivalent as determined by the board.
- (4) Has completed a state accredited practical nurse education program.

b. The applicant shall be required to pass a written examination in such subjects as the board may determine. The department shall determine the time and place of the examination. Upon successful completion of the examination, the department shall issue to the applicant a license to practice as a licensed practical nurse.

c. A temporary permit to practice nursing as a licensed practical nurse within the state of Utah may be granted for a period not exceeding four months:

- (1) For an applicant who is duly licensed to practice nursing as a licensed practical nurse in another state; or
- (2) To a person who has completed a state accredited practical nurse education program who in the opinion of the board meets all requirements for licensure except the passing of the examination or completion of formal proof of qualifications for licensure without examination.

d. The department may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed practical nurse to perform similar services under a different title, under the laws of another state, provided the application's qualifications and credentials meet those required of licensed practical nurses in this state for the same year of graduation. The duration of the practical nursing program shall be the same as that required for Utah programs.

e. The department shall collect, in advance, fees as follows:

- (1) Application for license as a practical nurse: \$15.00.
- (2) Re-examination: \$7.50.

(3) Letter of certification or each form issued to meet written request: \$1.00.

(4) Application for a temporary permit: \$3.00.

(5) Annual renewal: \$4.00.

(6) Application for reinstatement, after revocation or expiration for non-payment of renewal fees: \$7.50, plus all annual renewal fees during the period of revocation or expiration.

(7) Proctoring: \$10.00.

f. Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L. P. N.". No other person shall assume such title or use such abbreviation or any other words, letters, signs or devices to indicate that the person using the same is a licensed practical nurse.

g. Any person holding a license to practice as a licensed practical nurse heretofore issued by the department, which is valid on the effective date of this act, shall be deemed to be licensed as a practical nurse.

#### **Section 11. Renewal of License.**

The license of every person licensed under the provisions of this act shall be renewed annually, as provided for in Section 58-1-23, Utah Code Annotated 1953. Any licensee who has allowed his or her license to expire by failing to renew said license may be reinstated in accordance with the provisions of this act pertaining to fees.

#### **Section 12. Roster of Nurses.**

A roster showing the names and addresses of all registered nurses and licensed practical nurses shall be published by the department each year.

#### **Section 13. Nursing Education Program.**

a. An institution within the state desiring to conduct or conducting a nursing education program to prepare professional or practical nurses shall apply to the department and submit evidence that:

(1) Its nursing program meets the minimum standard requirements for professional or practical nursing programs, as established by the board.

b. A survey of the institution and its entire nursing education program shall be made by the nursing consultant or by other professional nursing personnel designated by the board who shall submit to the board a written report of such survey. If the requirements for an accredited nursing education program are met, the department shall approve the school as an accredited school of nursing.

It shall be the duty of the board through its nursing consultant to survey periodically all schools of nursing in the state and written reports of such surveys shall be submitted to the board. If the board determines that a nurse education program is not maintaining the standards required by the statutes and the rules and regulations established by the board, notice thereof in writing specifying the defect or defects and the recommendations shall be given to the institution conducting the program. If such institution fails to correct such defect or defects to

the satisfaction of the board within a reasonable time, it may upon a hearing, after twenty days notice, remove such school from the list of accredited schools of nursing. The notice shall state the purpose, time and place of the hearing and it shall be served upon the institution and upon any other interested parties as determined by the director.

#### **Section 14. Revocation of License—Grounds.**

a. The department shall have power to revoke or suspend any license to practice nursing issued by the department or deny any license applied for in accordance with provisions of this act if the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;
- (2) Is guilty of a crime involving moral turpitude;
- (3) Is unfit or incompetent by reason of negligence, habits or other cause;
- (4) Is habitually intemperate, or is addicted to the use of habit forming drugs;
- (5) Is mentally incompetent;
- (6) Is guilty of unprofessional conduct; or
- (7) Has willfully violated any of the provisions of this act.

b. Upon the filing of a verified petition with the department, charging a person with any of the acts specified above, the director shall fix a time and place for a hearing before the department and shall cause a copy of the charges, together with a notice of the purpose, time and place fixed for the hearing, to be served upon the accused at least twenty days prior thereto. At the hearing the accused shall have the right to appear either personally or by counsel or both, to produce evidence on his or her behalf, to cross-examine witnesses and to have subpoenas issued by the department. If there is reasonable cause to believe that the accused has committed the act or acts complained of, the department may revoke or suspend the license of the accused or otherwise discipline a licensee. Such proceedings shall be in accordance with the provisions of Chapter 1 of Title 58, Utah Code Annotated 1953.

A revoked or suspended license may be reissued after one year at the discretion of the director.

#### **Section 15. Exceptions to Act.**

No provisions of this act shall be construed to prohibit:

- (1) Gratuitous or home nursing by friends or members of the family of a patient.
- (2) The furnishing of nursing assistance in an emergency.
- (3) The practice of nursing which is incidental to a program of study by students enrolled in nursing programs accredited by the board.
- (4) The practice of any qualified nurse who is employed by the United States government, or any bureau, division or agency thereof, while in the discharge of his or her official duties.

Notwithstanding any of the provisions of this act, any person who has engaged in nursing for a period of three years preceding the effective date of this act, and who shall be recommended as being qualified to engage in nursing by two licensed physicians, one registered nurse and one hospital administrator, and who shall apply to the De-

partment of Registration within one year from the effective date of this act for a license to practice nursing, shall be granted a license as a practical nurse without the necessity of submitting to an examination for such license as herein otherwise provided.

**Section. 16. Penalty for Violation—Misdemeanor.**

a. It shall be a misdemeanor for any person (including an institution, agency, corporation, association, or individual) to:

(1) Sell or fraudulently obtain or furnish any nursing diploma, license renewal or record, or to aid or abet in any of said acts.

(2) Practice nursing as defined in this act under cover of a diploma, license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation.

(3) Practice professional and practical nursing unless duly licensed.

(4) Use in connection with his or her name any designation tending to imply that he or she is a licensed registered nurse or a licensed practical nurse while having no such license.

(5) Practice nursing during the time his or her license is suspended or has been revoked or has expired.

(6) Conduct a nursing educational program for the preparation of professional or practical nurses without authority so to do.

(7) Otherwise knowingly violate any provision of the act.

b. Violations of any of the provisions of this act is punishable upon conviction by a fine not exceeding \$299.00 or by imprisonment in the county jail for not more than six months, or both.

c. The practice of professional or practical nursing by any person who has not been issued a license under the provisions of this act, or whose license has been suspended, or revoked, or has expired and not renewed, is hereby declared to be inimical to the public welfare and in the event of such practice the attorney general of the state of Utah may apply for an injunction in the district court of the county wherein such person resides or is so practicing, to enjoin the continuation of any such practice.

**Section 17. Sections Repealed.**

Sections 58-14-1, 58-14-2, 58-14-4, 58-14-6, 58-14-8, and 58-14-11, Utah Code Annotated 1953. Section 58-14-3, Utah Code Annotated 1953, as amended by Chapter 100, Laws of Utah 1953, Section 58-14-5, Utah Code Annotated 1953, as amended by Chapter 101, Laws of Utah 1953, Section 58-14-7, Utah Code Annotated 1953, as amended by Chapter 116, Laws of Utah 1955, Section 58-14-9, Utah Code Annotated 1953, as amended by Chapter 104, Laws of Utah 1953, Section 58-14-10, Utah Code Annotated 1953, as amended by Chapter 102, Laws of Utah 1953, and Section 58-14-6.1, Utah Code Annotated 1953, as enacted by Chapter 103, Laws of Utah 1953, are hereby repealed.

**Section 18. Sections Amended.**

Section 58-1-5, Utah Code Annotated 1953, as amended by Chapters 95, 96, 97 and 105, Laws of Utah 1953, Chapter 115, Laws of Utah 1957, Chapters 100, 101 and 102, Laws of Utah 1959, and Chapters 133 and 134, Laws of Utah 1961 is amended to read:

**58-1-5. Functions of Department of Registration—Representative Committees.**

The functions of the department of registration shall be exercised by the director of registration under the supervision of the commission of the department of business regulation and, when so provided, in collaboration with and with the assistance of representative committees of the several professions, trades and occupations as follows:

(1) For accountants, a committee of three competent public accountants.

(2) For architects, a committee of three architects.

(3) For barbers, a committee of three persons, citizens of the United States who shall have practiced barbering for at least five years.

(4) For chiropody, a committee of three members.

(5) For chiropractors, a committee of three chiropractors; chiropractic is defined as the science of palpating and adjusting the articulation of the spinal column by the hands only.

(6) For dentists, a committee of five persons; but no member of such committee shall be a member of the faculty of any dental college or dental department of any medical college or have a financial interest in any such college.

(7) For funeral directors, embalmers and apprentice embalmers, a committee of three licensed funeral directors or embalmers; provided, however, that each member of such committee shall have had a minimum of five years' experience in the preparation and disposition of dead human bodies, and in the practice of embalming, immediately preceding their appointment.

(8) For cosmetologists and electrologists, a board of three licensed cosmetologists. Members may or may not be teachers, but if teachers may not be actively teaching.

(9) For practitioners of medicine and surgery in all branches thereof, a committee of five persons each of whom shall be a licensed practitioner of medicine and surgery in all branches thereof in this state and a graduate of a chartered medical college of recognized standing.

(10) For practitioners in the treatment of human ailments in accordance with the tenets of the professional school, college or institution, recognized by the department of registration, of which the applicant is a graduate as designated in his application for license, including the practice of obstetrics and with the use of drugs or medicine, but without operative surgery, except operative minor surgery, a committee of five members to be designated by the director.

Notwithstanding the provisions of Section 58-1-6, Utah Code Annotated 1953, one shall be licensed to practice medicine and surgery in all branches thereof, two shall be practitioners of naturopathy licensed to practice the treatment of human ailments without the use of drugs or medicine and without operative surgery, one shall be a citizen who is not licensed in any healing art and one shall be a member of the staff of the University of Utah medical school.

(11) For practitioners of naturopathy, a committee of three members each of whom shall be a graduate of a school of naturopathy of standing recognized by the department of registration.

(12) For practitioners of physical therapy, a committee of three members, each of whom shall be a licensed practitioner of physical therapy in this state and a graduate of an approved school of physical therapy.

(13) For osteopathic physicians and surgeons, a committee of three members each of whom shall be a graduate of a chartered college of osteopathy or recognized standing.

(14) For optometrists, a committee of three persons.

(15) For pharmacists, a committee of five pharmacists to be designated as Utah state board of pharmacy.

(16) For veterinarians, a committee of three veterinarians each of whom shall be a graduate of a college or university of standing recognized by the department of registration.

(17) For plumbers, a committee of five persons.

(18) For sanitarians, a committee of five persons, each of whom shall have had a minimum of five years experience as a sanitarian.

(19) For persons engaged in, conducting, operating or maintaining in any home, residence or domiciliary facility the business of a nursing home, maternity home, the refuge care or maintenance of the needy, the care of the aged or infirm, for two or more non-related individuals, a committee of five certified operators, each of whom shall have had a minimum of five years' experience as a home operator.

(20) For psychologists, a committee of five psychologists. Each committee member shall be exempt from the five year license requirement set forth in section 58-1-6, Utah Code Annotated 1953, until December 31, 1966.

#### **Section 19. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved March 22, 1963.

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## **CHAPTER 122**

H. B. No. 73

(Passed February 25, 1963. In Effect May 14, 1963)

### **NURSING AND MATERNITY HOMES**

**An Act Amending Section 58-15-4, Utah Code Annotated 1953, as Amended by Chapter 105, Laws of Utah 1953, Requiring a Written Application for a Certificate of Registration for Nursing and Maternity Homes; Establishing Minimum Qualifications; and Fixing Fees.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 58-15-4, Utah Code Annotated 1953, as amended by Chapter 105, Laws of Utah, 1953, is amended to read:

#### **58-15-4. Application for Certificate of Registration—Fees.**

(a) An applicant for certificate of registration under the provisions of this act shall submit to the department a written application, verified

under oath that the applicant has the following minimum qualifications:

- (1) Is twenty-one years of age or more.
- (2) Is a citizen of the United States of America.
- (3) Is a good moral character.
- (4) Is in good physical and mental health.

(b) The applicant shall be required to pass a written examination in such subjects as the committee may determine and said applicant shall agree to the following:

- (1) To be kind and considerate toward all patients.
- (2) To refrain from all physical harm or abuse of patients.
- (3) To permit patients private interviews and visitations with relatives, friends and/or sponsors.
- (4) Not accept any real or personal property of any kind from any patient by direct gift, except as might be otherwise given through a probate court.

(c) The applicant applying for a certificate shall pay a fee of ten dollars (\$10.00) to the department with an annual renewal fee of three dollars (\$3.00).

Approved February 27, 1963.

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## CHAPTER 123

H. B. No. 68

(Passed February 19, 1963. In effect May 14, 1963.)

### PRACTICE OF OPTOMETRY

**An Act Amending Section 58-16-6, Utah Code Annotated 1953, Establishing Fees for the Practice of Optometry.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 58-16-6, Utah Code Annotated 1953, is amended to read:

#### 58-16-6. Fees.

Fees shall be paid by the respective applicants as follows:

For an examination to determine his fitness to receive a license as a registered optometrist, \$20.

For a license as a registered optometrist, \$5.

For an examination to determine his preliminary education, \$10.

For a license without examination, \$25.

For a renewal of a license, \$7.50.

Approved February 20, 1963.

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## CHAPTER 124

H. B. No. 76

(Passed February 19, 1963. In effect May 14, 1963)

### PRACTICE OF PHARMACY

**An Act Amending Section 58-17-8, Utah Code Annotated 1953, as Amended by Chapter 117, Laws of Utah 1957, Requiring the Depart-**

**ment of Registration to Collect Fees of Each Applicant for a License to Practice Pharmacy and Fixing Said Fees.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-17-8, Utah Code Annotated 1953, as amended by Chapter 117, Laws of Utah, 1957, is amended to read:

**58-17-8. Filing Fee.**

The department of registration shall collect upon the filing of each such application pursuant to section 58-17-6 the sum of \$5. A fee in the sum of \$7.50 shall be paid upon the annual renewal of a permit on or before January 2nd of each year.

Approved February 20, 1963.

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**CHAPTER 125**

H. B. No. 70

(Passed February 19, 1963. In effect May 14, 1963)

**PRACTICE OF PLUMBING**

**An Act Amending Section 58-18-12, Utah Code Annotated 1953, Establishing License Fees for Journeyman Plumbers.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-18-12, Utah Code Annotated 1953, is amended to read:

**58-18-12. Fees.**

The fees to be paid by applicants shall be as follows:

For the examination for journeyman plumbers, \$10.

For the issuance of journeyman plumber's certificate, \$5.

For the issuance of the apprentice plumber's certificate, \$2.

For the renewal of a journeyman plumber's certificate, \$7.50; for the renewal of apprentice plumber's certificate, \$7.50.

Approved February 20, 1963.

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**CHAPTER 126**

H. B. No. 67.

(Passed March 11, 1963. In effect May 14, 1963.)

**PRACTICE OF ENGINEER**

**An Act Amending Section 58-22-5, Utah Code Annotated 1953, as Enacted by Chapter 118, Laws of Utah 1955, Providing for a Per Diem Allowance for Members of the Committee Regulating the Practice of Engineering and Land Surveying, and Expenses Incurred in Carrying Out the Provisions of the Act.**

*Be it enacted by the Legislature of the State of Utah:*



**Section 1. Section Amended.**

Section 58-22-5, Utah Code Annotated 1953, as enacted by Chapter 118, Laws of Utah 1955, is amended to read:

**Section 58-22-5. Per Diem and Expenses.**

Each member of the committee shall receive the sum of fifteen dollars \$15 per diem when actually attending to the work of the committee or any of its committees and for the time spent in necessary travel, and, in addition thereto, shall be reimbursed for all actual travel, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this act.

Approved March 11, 1963.

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**CHAPTER 127**

H. B. No. 96

(Passed February 25, 1963. In Effect May 14, 1963)

**BASIC SCIENCE LAW**

**An Act Amending Sections 58-27-2, 58-27-3, 58-27-4, and 58-27-8, Utah Code Annotated 1953, as Enacted by Chapter 98, Laws of Utah 1959, Relating to Examining Committee for Basic Science Courses; Providing That a Licensed Dentist Shall Be a Member of the Board and Permitting Basic Science Examinations Prior to the Applications for License to Practice Treatment of Human Ailments or Dentistry.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Sections 58-27-2, 58-27-3, 58-27-4 and 58-27-8, Utah Code Annotated 1953, as enacted by Chapter 98, Laws of Utah 1959, are amended to read:

**58-27-2. Examining Committee.**

There shall be an examining committee of six members to conduct and assist in conducting examinations of all persons applying for licenses or certificates to practice medicine and surgery, dentistry and oral surgery, osteopathy, osteopathy and surgery, chiropractic, or naturopathy in the state.

**58-27-3. Administration of Act.**

The administration of the provisions of this act is hereby committed to the department of registration. The governor shall appoint a committee of educational requirements examiners consisting of six members, within sixty days after the effective date of this act, consisting of one duly licensed doctor of medicine, osteopath, chiropractor, naturopath, dentist and a member of the attorney general's staff. The member of the committee so designated shall receive payment of each day or portion thereof actually spent in the performance of his duties; together with actual necessary expenses incurred in the discharge of such duties as determined by the department of registration.

**58-27-4. Terms of Members of Committee.**

The members of the first committee shall be appointed to serve for the following terms: one for one year, one for two years, one for three years, one for four years, two for five years. Upon the expiration of such terms and of all terms thereafter the governor, upon recommendation of the director, shall appoint a successor to the member whose term expires for a term of five years. Each member shall hold office until the expiration of term for which he is appointed. Vacancies in said board shall be filled by appointment by the governor upon recommendation of the director, within thirty days after such vacancy occurs for the balance of the unexpired term. Each member of the committee shall receive a certificate of appointment from the governor, upon recommendation of the director, and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duties.

**58-27-8. Application for License.**

Any person desiring to apply to the director of licenses for a license to practice medicine and surgery, dentistry and oral surgery, osteopathy and surgery, chiropractic, naturopathy, or drugless therapeutics shall first present to the director of licenses credentials, in form and substance satisfactory to the board that he has received one year's instruction of not less than thirty-six weeks in subjects prescribed in Section 58-27-6, or present to the director of licenses credentials required by law evidencing his qualifications to be admitted to license, or to take the examination prerequisite to securing a certificate or license, and if they are found satisfactory and the applicant is eligible for examination the director of licenses shall issue to such applicant a certificate giving the name of the applicant and certifying that he is entitled to take the preliminary examination provided for in this chapter but without specifying the branch of therapeutics for which the applicant has applied for a license, and upon presentation of such certificate to the examining committee, together with an examining fee of ten dollars, the applicant shall be entitled to take the examination.

Approved February 27, 1963.

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**CHAPTER 128**

H. B. No. 71.

(Passed March 11, 1963. In effect May 14, 1963.)

**FEEES FOR MEDICINE**

**An Act Amending Section 58-27-11, Utah Code Annotated 1953, as Enacted by Chapter 98, Laws of Utah 1959, Providing for Compensation and Expenses for the Examining Committee for License to Practice Medicine and Surgery, Dentistry and Oral Surgery, Osteopathy, Osteopathic Surgery, Chiropractic, Naturopathy or Drugless Therapeutics:**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 58-27-11, Utah Code Annotated 1953, as enacted by Chapter 98, Laws of Utah 1959, is amended to read:

**58-27-11. Compensation and Expenses of Committee.**

Each member of the examining committee shall receive the sum of fifteen dollars a day for each day actually engaged in conducting examinations or in the preparation of examination questions or the grading of examination papers, together with his necessary traveling expenses, to be paid out of the department of registration fund on vouchers approved by the director of registration.

Approved March 11, 1963.

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**CHAPTER 129**

S. B. No. 67

(Passed March 12, 1963. In effect May 14, 1963)

**MONEY ORDER VENDORS REGISTRATION ACT**

**An Act Relating to the Business of Selling or Issuing Checks, Money Orders, or Other Instruments for the Transmission or Payment of Money; Providing for the Licensing and Regulation of Such Businesses by the State Department of Business Regulation; Providing for Exemptions From the Act; Providing for Enforcement of the Act and a Penalty for Violation Thereof.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Purpose to Protect Public.**

To protect the public from losses which might otherwise result from the default in payment of checks or other instruments for the payment or transmission of money which have been sold or issued by persons of inadequate financial resources or reserves, it is necessary to provide for the licensing and regulation of the business of selling or issuing such instruments.

**Section 2. Definitions.**

As used in this act:

(1) the word "person" includes individuals, partnerships, associations and corporations, but does not include any agency or political subdivision of the government of the United States or of this state or of any government foreign to the United States.

(2) the word "check" includes any check, draft, money order, personal money order, or other instrument for the transmission of money.

(3) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission, or handling of money, whether such instrument be signed by the seller or by the purchaser or remitter or some other person.

(4) the word "licensee" means a person duly licensed by the Commissioner pursuant to this act.

(5) the words "to sell" means to sell, to issue or to deliver a check.

(6) the words "to deliver" means to deliver a check to the first person who, in payment for same, makes or purports to make a remittance of or against the face amount thereof, whether or not the person who delivers the check signs the check as maker, drawer, or otherwise.

(7) the word "department" means the state department of business regulations of Utah.

### **Section 3. License Requirements.**

No person, except those specified in Section 4, shall engage in the business of selling checks, as a service or for a fee or other consideration, without first obtaining a license hereunder. Any person engaged in said business on the effective date of this act may continue to engage therein without a license until the department shall have acted upon his application for a license, provided that such application be filed within 30 days after the effective date of this act.

### **Section 4. Exceptions to Act.**

No license to sell checks as mentioned in this act shall be required hereunder of any of the following:

(1) Banks, trust companies, building and loan associations, and savings and loan associations, whether organized under the laws of this state or of the United States; provided that nothing herein shall be deemed to enlarge the powers of the foregoing persons; or

(2) Incorporated telegraph companies insofar as they receive money at any of their respective offices or agencies for immediate transmission by telegraph; or

(3) Agents of a licensee, as provided in Section 10.

### **Section 5. Application Requirements—Fees.**

Each application for a license hereunder shall be in writing, under oath, and in the form prescribed by the department. The application shall contain such relevant information, including financial statements, as the department may require to aid him in determining the financial responsibility, experience, character and general fitness of the applicant, or if the applicant is other than an individual, of the members, officers or directors, of the applicant. At the time of making such application, the applicant shall pay to the department the sum of \$25.00 as a fee for investigating the application and the sum of \$50.00 as a license fee for the period ending with the current calendar year; provided that if the license is granted after June thirtieth in any year the license fee shall be \$25.00.

### **Section 6. Investigation of Application.**

Upon the filing of such application, accompanied by the sums stated in Section 5, the department shall investigate the application and if it shall find that the financial responsibility, experience, character and general fitness of the applicant are such as to warrant the belief that the business will be operated lawfully, honestly and fairly, within the purposes of this act, it shall notify the applicant that a license to engage in the business of selling checks in this state will be issued upon the filing by the applicant of a surety bond or other securities, as provided in Section 7.

**Section 7. Surety Bond—Securities—Required.**

The department shall not issue a license to the applicant until there has been filed with the department a surety bond, issued by a surety or bonding company authorized to do business in this state, in the principal sum of \$10,000, and in an additional principal sum of \$10,000 for each location, in excess of one, at which the applicant proposes to sell checks in this state; provided that any applicant may apply to be licensed under a bond for a principal sum of less than \$10,000 for any location at which the department finds, from verified financial records or statements of the applicant, that the aggregate of applicant's liabilities at any one time on outstanding checks to be sold pursuant to this chapter at such location will be a sum less than \$10,000 and upon such finding, the department shall issue a license to the applicant for such location upon the filing by the applicant of a surety bond in the amount of such stated aggregate liability, but in no event shall a bond for license under this chapter be less than \$2,500 in principal amount and no bond shall be required to be in excess of \$50,000. If the bond filed be in a principal sum of less than \$50,000, it shall be accompanied by a list of the locations at which the business is to be conducted. The bond shall be in form satisfactory to the department and shall run to the state for the benefit of any claimants against the applicant or his agents to secure the faithful performance of the obligations of the applicant and his agents with respect to the receipt, handling, transmission and payment of money in connection with the sale of checks. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Such claimants against the applicant or his agents may themselves bring suit directly on the bond, or the attorney general may bring suit thereon in behalf of such claimants, either in one action or successive actions.

In lieu of such corporate surety bond, or of any portion of the principal thereof as required by this section, the applicant may deposit with the department securities consisting of interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, school district or instrumentality of this state, to an aggregate amount, based on principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited with the department to secure the same obligations as would the surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the commissioner, to substitute other securities for those deposited, and shall be required to do so on written order of the department made for good cause shown.

If the department finds that the bond or securities so filed are in proper form, he shall issue to the applicant a license to engage in the business of selling checks in this state.

**Section 8. Reports Required.**

After a license has been granted, the licensee shall thereafter maintain the bond or securities in the amount prescribed in Section 7. Each licensee who does not have on file or deposit such bond or securities in

the undiminished principal sum of \$50,000, shall file quarterly reports with the department, setting forth the locations at which he sells checks in this state and the aggregate of his liabilities on outstanding checks as of January 1, April 1, July 1, and October 1 in each year, the report for each such date being due on or before the 15th day thereafter. Within 10 days following the filing of such a report, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations, or aggregate of liabilities, and may be decreased to reflect any decrease in the number of locations or aggregate of liabilities. If the department shall at any time reasonably determine that the bond or securities are insecure, deficient in amount, or exhausted in whole or in part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this act, such order to be complied with within 30 days following service thereof upon the licensee.

#### **Section 9. License Renewal Fee.**

Each license shall remain in full force and effect until surrendered or revoked. Every license shall, on or before the tenth day of each December, pay to the department the sum of \$50.00 as a license fee for the succeeding calendar year.

#### **Section 10. Agents—Sub-agents.**

A licensee may conduct his business at one or more locations within this state, as follows:

- (1) The business may be conducted through or by means of such agents and subagents as the licensee may from time to time appoint.
- (2) No license under this act shall be required of any such agent or subagent, except as provided in the following subsection.
- (3) An agent or subagent other than a person referred to in subsections (1) and (2) of Section 4, who sells the licensee's checks over-the-counter to the public shall not be exempt from licensing under this act if such agent or subagent, in the regular conduct of such business, receives or at any time has access to (a) the licensee's checks which, having been paid, are returned through banking channels or otherwise for verification or for reconciliation or accounting with respect thereto or (b) bank statements relating to checks so returned. This subsection shall not affect the exemption of any agent of the licensee who does not sell checks over the counter to the public.

#### **Section 11. Liability for Payment of Checks.**

Each licensee shall be liable for the payment of all checks which he sells, in whatever form and whether directly or through an agent as the maker or drawer, according to the negotiable instrument laws of this state; and a licensee who sells a check, whether directly or through an agent, upon which he is not designated as maker or drawer, shall nevertheless have the same liabilities with respect thereto as if he had signed the check as the drawer of the check.

#### **Section 12. Name of Licensee Required.**

Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon.

**Section 13. Revocation of License.**

The department may revoke a license on any ground on which it may refuse to grant a license, for violation of any provision of this act, or for failure to comply with any order duly issued by the department under this act. The department, if it has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books and records of the licensee.

**Section 14. Notice of Revocation.**

No license shall be denied or revoked except on 10 days' written notice to the applicant or licensee. Upon receipt of such notice the applicant or licensee may, within 10 days thereafter, make written demand for a hearing. The department upon receipt of such demand shall proceed with reasonable promptness to hear and determine the matter as provided by law.

Whenever the department, after such hearing, shall enter an order adverse to the applicant or licensee, it shall immediately notify the applicant or licensee of such order. Within 5 days after the entry of such order, the department shall file with the department its findings and summary of the evidence supporting them and it shall immediately deliver a copy thereof to the applicant or licensee.

**Section 15. Rehearing—Rules of Civil Procedure Apply.**

Within 20 days after notice that the department has denied an application for rehearing or, if application is granted, within 20 days after notice of a decision or rehearing, any party aggrieved by the order of the department may apply to the Supreme Court for judicial review of the action of the department. The provisions of the Utah Rules of Civil Procedure relating to extraordinary writs shall apply to the proceedings before the Supreme Court.

**Section 16. Penalty for Violation.**

Any person and the several members, officers, directors, agents and employees thereof who violates or participates in the violation of any provision of this act shall be guilty of a misdemeanor. Each transaction in violation of this act and each day that a violation continues shall be a separate offense.

**Section 17. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved March 16, 1963.

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**CHAPTER 130**

H. B. No. 206.

(Passed March 14, 1963. In effect May 14, 1963.)

**DEBT MANAGEMENT REGULATION**

**An Act to Regulate the Business of Debt Management; to Require Licenses and to Fix Fees Therefor; to Prescribe Powers and Duties of**

**the Department of Registration and the Director Thereof; to Prescribe Conditions for Debt Management Contracts; to Provide for the Disposition of Revenues; and to Provide Penalties for Violation of the Provisions of This Act.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Definitions.**

As used in this act

(a) "Debt management" means the planning and management of the financial affairs of a debtor for a fee and the receiving therefrom money or evidences thereof for the purpose of distributing the same to his creditors in payment or partial payment of his obligations.

(b) "Licensee" means any individual, copartnership, unincorporated association or corporation licensed under this act.

(c) "Department of Registration" means the department of state government within the Department of Business Regulation as defined in 58-1-1, Utah Code Annotated 1953.

(d) "Debtor" means a person, 50% or more of whose income is in the form of wages or salaries.

(e) "Office" means each location by street number, building number, city and state where any person engages in debt management.

(f) "Creditor" means a person for whose benefit moneys are being collected and disbursed by licensee.

**Section 2. Exception to Act.**

Any person engaged in debt management shall be deemed to be rendering financial planning service, but this act shall not apply to the following when engaged in the regular course of their respective businesses and profession.

(a) Attorneys at law.

(b) Banks, fiduciaries, financing and lending institutions, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business.

(c) Title insurers and abstract companies, while doing an escrow business.

(d) Employees of licensees under this act.

(e) Judicial officers or others acting under court orders.

(f) Nonprofit religious, fraternal or cooperative organizations offering debt management service exclusively for their members.

(g) Nonprofit corporations organized to render financial planning service to the public.

**Section 3. Effective Date.**

After July 1, 1963, it shall be unlawful for any person to engage in the business of debt management without first obtaining a license as required in this act.

**Section 4. License—Requirements and Bond—Fees—Copy of Contract—Violation.**

Any person desiring to obtain a license to engage in the debt manage-



ment business in this state shall file with the department of registration an application in writing, under oath, setting forth his business name, the exact location of his office, names and addresses of all officers and directors of an association or a corporation, and if a partnership, the partnership name and the names and addresses of all partners, and a copy of the certificate of assumed name or certificate of copartnership or articles of incorporation. At the time of filing the application the applicant shall pay to the department of registration a license fee of \$50.00 for each office and an investigation fee of \$50.00. At the time of filing the application the applicant shall furnish a bond to the people of the state in the sum of \$25,000.00, conditioned upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents, and upon the faithful observance of the provisions of this act and the contract between the licensee and the debtor. The bond or bonds shall be approved by the department of registration and filed in the office of the department of registration. No person, firm or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of this act.

Each applicant for a license shall file with his application a blank copy of the contract intended to be used between the licensee and the debtor and shall with the department of registration a copy of all changes and amendments thereto.

The license issued under this act shall expire on December 31 next following its issuance unless sooner surrendered, revoked or suspended, but may be renewed as provided in this act.

Any person who suffers any loss or damage by reason of the neglect or infidelity of a licensee, his employees or agents, or by the licensee's violation of any of the provisions of this act or of the contract between him and the debtor shall have a right of action against the licensee and the sureties on his bond.

Each applicant for a license shall file with his application a written appointment of the Director of Registration as agent of the applicant for service of process in this state. Service upon the director shall be sufficient service upon any licensee under this act.

#### **Section 5. Department to Investigate—Obtain Credit Report.**

Upon the filing of the application and the payment of the fees and the approval of the bond, the department of registration shall investigate the facts, and if it finds that the financial responsibility, experience, character and general fitness of the applicant and of the members thereof, if the applicant is a partnership or an association, and of the officers and directors thereof, if the applicant is a corporation, are such as to command the confidence of the community to warrant belief that the business will be operated fairly and honestly within the purposes of this act and that the applicant or the applicant and the members thereof or the applicant and the officers and directors thereof have not been convicted of any crime involving moral turpitude, or that such person has not had a record of having defaulted in the payment of money collected

for others, including the discharge of such debts through bankruptcy proceedings, the commission shall issue the applicant a license to engage in the debt management business. The commission may require as part of the application a credit report and such information as it finds necessary.

#### **Section 6. Renewal of License.**

Each licensee on or before December 1 may make application to the department of registration for renewal of its license. The application shall be on the form prescribed by the department of registration and shall be accompanied by a fee of \$10.00 together with a bond as in the case of an original application. A separate application shall be made for each office.

#### **Section 7. Revocation or Suspension of License.**

(1) The department of registration may deny, revoke or suspend any license issued under this act for the following causes:

(a) Conviction of a felony or of a misdemeanor involving moral turpitude.

(b) For violating any of the provisions of this act or rules and regulations of the department.

(c) For fraud or deceit in procuring the issuance of the license.

(d) For indulging in a continuous course of unfair conduct.

(e) For insolvency, filing in bankruptcy, receivership, or assigning for the benefit of creditors by any licensee or applicant for a license under the act.

(2) The denial, revocation or suspension of a license shall only be made upon specific charges in writing, under oath, filed with, or by, the department of registration, whereupon a hearing shall be had as to the reasons for any denial, revocation or suspension and a certified copy of the charges shall be served on the licensee not less than 10 days prior to the hearing.

(3) No license shall be transferable or assignable.

#### **Section 8. Licensee to Furnish Debtor Copy of Contract.**

Each licensee shall make a written contract between himself and a debtor and immediately furnish the debtor with a copy of the contract. The contract shall set forth the complete list of the debtor's obligations to be adjusted, a complete list of the creditors holding such obligations, the total charges agreed upon for the services of the licensee and the beginning and expiration date of the contract. No contract shall be for a period longer than 36 months. A new contract cannot be entered into between the parties until the contract in existence has expired by its own terms. All contracts shall contain a provision allowing the debtor to terminate the same at his pleasure without penalty to him.

#### **Section 9. Licensee to Maintain Separate Bank Accounts—Maintain Records.**

Each licensee shall maintain a separate bank account for the benefit of debtors in which all payments received from the debtor for the bene-

fit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor. Every licensee shall keep, and use in his business, books, accounts and records which will enable the department of registration to determine whether such licensee is complying with the provisions of this act and with the rules and regulations of the department of registration. Every licensee shall preserve such books, accounts and records for at least 7 years after making the final entry on any transaction recorded therein.

#### **Section 10. Department to Examine Records.**

The department of registration may examine without notice the condition and affairs of each licensee. In connection with any examination, the department of registration may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The department of registration shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations issued by the department. The licensee shall pay the actual cost of the examination, as determined by the department of registration, which fee shall be deposited in the state treasury to the credit of the general fund. Failure to pay the examination fee within 30 days of receipt of demand from the department of registration shall automatically suspend the license until the fee is paid.

In the investigation of alleged violations of this act, the department of registration may compel the attendance of any person or the production of any books, accounts, records, and files used, and may examine under oath all persons in attendance.

#### **Section 11. Fees—Limitation.**

(a) The fee of the licensee for assuming the responsibility of debt management shall be agreed upon in advance and stated in the contract and provisions for settlement in case of prepayment shall be clearly stated in the contract. Except for an initial retainer fee, which shall not exceed \$25.00, fees shall be amortized equally each month over the length of the contract and no more than the monthly amortized amount may be applied to charges while the contract is in full force and effect, except in event of prepayment. The total fee received by a licensee (except for the initial retainer fee) shall not exceed in the aggregate ten per cent (10%) of the payments actually distributed by the licensee to the creditors of the debtor. In the event of total payment of the contract before the term of the contract has expired, the licensee will be entitled to an amount equal to not more than 7% of the remaining unamortized listed indebtedness specified in the terms of the contract.

(b) A licensee shall not receive any fee other than an initial retainer fee unless he has the consent of at least 51% of the total amount of indebtedness and of the total number of the creditors listed in the licensee's contract with the debtor.

**Section 12. Licensee—Requirements.**

Each licensee shall

(a) Keep complete and adequate records during the term of the contract and for a period of seven years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements and charges, which records shall be open to inspection by the department of registration and its duly appointed agents during normal business hours.

(b) Make remittance to creditors within 15 days after receipt of any funds, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain.

(c) Upon request furnish the debtor a written statement of his account each 90 days, or a verbal accounting at any time the debtor may request it during normal business hours.

(d) No licensee shall accept an account unless a written and thorough budget analysis indicates that the debtor can reasonably meet the requirements required by the budget analysis.

(e) In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of that compromise.

**Section 13. Licensee—Prohibited Acts.**

No licensee shall:

(a) Purchase from a creditor any obligation of a debtor.

(b) Operate as a collection agent and as a licensee as to the same debtor's account.

(c) Execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished.

(d) Receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, either as to real or personal property.

(e) Pay any bonus or other consideration to any person for the referral of a debtor to his business, nor shall he accept or receive any bonus, commission or other consideration for referring any debtor to any person for any reason.

(f) Advertise his services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcasted or televised his services in any manner whatsoever wherein any false, misleading or deceptive statement or representation with regard to the services to be performed by the licensee or the charges to be made therefor.

**Section 14. Penalty for Violation.**

(1) Any person, partnership, association, corporation or any other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent or representative thereof who willfully

or knowingly engages in the business of debt management without the license required by this act, is guilty of a misdemeanor.

(2) Any licensee under this act who violates any provision of this act is guilty of a misdemeanor, and upon conviction, in addition to other penalties shall forfeit his license.

**Section 15. Fees—To General Fund.**

All fees collected under the provisions of this act shall be paid promptly into the state treasury to the credit of the general fund.

Approved March 21, 1963.

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## REVENUE AND TAXATION

### CHAPTER 131

S. B. No. 27.

(Passed March 13, 1963. In effect May 14, 1963.)

#### FREEPORT BILL

**An Act Providing for an Ad Valorem Tax Exemption for Tangible Personal Property Which Is Shipped Beyond the State Within the Period of Twelve Months Following January 1, M, and Repealing Section 59-2-4, Utah Code Annotated, 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Situs of Tangible Personal Property.**

Tangible personal property being held for sale or processing and which is present in Utah on January 1, m, whether manufactured, processed, produced or otherwise originating within or without the state, which is shipped to final destination outside this state within twelve months following is deemed to have acquired no situs in Utah for ad valorem property tax purposes and shall be exempt.

**Section 2. Tax Commission—Rules and Regulations.**

The Utah State Tax Commission shall prescribe rules and regulations under which the foregoing exemption may be claimed and applied.

**Section 3. Taxpayer to Prove Exemption.**

The burden of proof shall be upon the taxpayer to establish the exemption.

**Section 4. Section Repealed.**

Section 59-2-4, Utah Code Annotated, 1953, as amended, is hereby repealed.

Approved March 21, 1963.

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### CHAPTER 132

S. B. No. 142.

(Passed March 14, 1963. In effect May 14, 1963.)

#### TAX COMMISSION SALARIES

**An Act Amending Section 59-5-38, Utah Code Annotated 1953, as**

**Amended by Chapter 144, Laws of Utah 1961, Relating to Salaries of Members of the State Tax Commission.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 59-5-38, Utah Code Annotated 1953, as amended by Chapter 144, Laws of Utah 1961, is amended to read:

**59-5-38. Qualifications—Vacancies—Salaries.**

The persons to be appointed as members of the state tax commission shall be such as are known to possess knowledge of the subject of taxation and motor vehicle control and registration. At least one member shall have basic knowledge of the theory and practice of ad valorem taxation. At least one member shall have basic knowledge in the theory and practice of excise, income, sales, and corporate taxation. Each member shall have had executive and administrative experience. Vacancies on the commission shall be filled so that the membership shall represent a composite skill in the total field of taxation.

No person appointed as a member of the state tax commission shall hold any other office under the laws of this state, nor any office under the government of the United States or any other state. Each member shall devote his time to the duties of the office and shall not hold any other position of trust or profit, nor engage in any other occupation inconsistent with his duties as tax commissioner. Any members otherwise qualified shall be eligible to reappointment.

The salaries of the tax commissioners shall be set by the legislature.

Approved March 20, 1963.

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**CHAPTER 133**

H. B. No. 66

(Passed February 25, 1963. In Effect May 14, 1963)

**ASSESSMENT OF MINES**

**An Act Amending Section 59-5-57, Utah Code Annotated 1953, as Amended by Chapter 107, Laws of Utah 1953, and Chapter 142, Laws of Utah 1961, and Sections 59-5-65 and 59-10-23, Utah Code Annotated 1953, Relating to the Assessment of Mines; Providing for the Deposit of Security with the Tax Commission to Insure the Payment of the Ad Valorem Tax on Metalliferous Mines or Mining Claims, and Providing for the Collection of Delinquent Taxes Based on Operation of Prior Years.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 59-5-57, Utah Code Annotated 1953, as amended by Chapter 107, Laws of Utah 1953, and Chapter 142, Laws of Utah 1961, is amended to read:

**59-5-57. Assessment of Mines.**

All metalliferous mines and mining claims, both placer and rock in

place, shall be assessed at \$5 per acre and in addition thereto at a value equal to two times the average net annual proceeds thereof for the three calendar years next preceding or for as many years next preceding as the mine has been operating, whichever is less; provided, however, there shall be no valuation based upon net annual proceeds of uranium or vanadium mines for the purpose of assessment of any such mine or mining claim for any one year in which there were no gross proceeds realized in the year next preceding the year of assessment. All other mines or mining claims and other valuable mineral deposits, including lands containing coal or hydrocarbons, shall be assessed at 30% of their reasonable fair cash value. All machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims and the value of any surface use made of mining claims or mining property for other than mining purposes shall be assessed at 30% of their reasonable fair cash value. In all cases where the surface of lands is owned by one person and the mineral underlying such lands is owned by another, such property rights shall be separately assessed to the respective owners. In such cases the value of the surface if it is used for other than mining purposes shall be assessed by the assessor of the county in which the property is situated.

#### **Section 2. Section Amended.**

Section 59-5-65, Utah Code Annotated 1953, is amended to read:

#### **59-5-65. Collection of Tax—Lien.**

The tax mentioned in the preceding sections on mines and mining claims, and mining property, shall be collected and the payment thereof enforced in the manner provided for the collection and enforcement of other taxes; and every tax is a lien upon the mines or mining claims upon which such mining machinery and improvements are erected, and from which the ores or minerals are extracted, which lien attaches on the 1st day of January in each year, and the sale thereof for delinquent taxes may be made as provided for the sale of real estate for delinquent taxes; provided that the Tax Commission, in order to insure the payment and collection of the ad valorem property tax imposed against uranium and vanadium mining properties, may require the owner or the person engaged in mining the same to deposit with it such security as the Tax Commission shall determine. That security may be sold by the Tax Commission at public sale if it becomes necessary so to do in order to recover any tax, interest or penalty due. Notice of such sale may be served upon the person who deposited such securities personally or by registered mail sent to the last known address as the same appears in the records of the Tax Commission. Upon such sale the surplus, if any, above the amount owing shall be returned to the person who deposited the security.

The security shall be deposited with the Tax Commission within 90 days of proper notice by the Tax Commission that such security is required. Notice by registered mail to the last known address as the same appears in the records of the Tax Commission shall be proper notice.

In the event that such security is not deposited on or before the due date, the Tax Commission shall determine the tax for that year and any preceding year, if unpaid, in jeopardy, and shall proceed to collect them under the provisions of Sections 59-10-23, 59-10-24, and 59-10-25, Utah Code Annotated 1953.

Following any recourse to the security by the Tax Commission, or jeopardy proceedings under the provisions of Sections 59-10-23, 59-10-24, and 59-10-25, Utah Code Annotated 1953, and prior to the renewal of the operations by the person engaged in using the properties, he shall deposit with the Tax Commission such new security as the Commission may determine.

### Section 3. Section Amended.

Section 59-10-23, Utah Code Annotated 1953, is amended to read:

#### 59-10-23. Collection of Tax—Waste or Depletion.

If the tax commission finds:

(a) That the owner or lessee of any real property including improvements subject to taxation within the state is removing or destroying or is about to remove or destroy the same to such an extent as to render doubtful the payment of delinquent taxes, penalty, and interest, if any, and the payment of current taxes; or

(b) That the continued operation and extracation of ores and minerals from mine or mining claims, or the method employed by the owner or lessee, contractor or other person working upon or operating any mine or mining claim will render doubtful the payment of delinquent taxes, penalty and interest, if any, for past years, the current year and in the case of metalliferous mines for the next succeeding year against such property; the commission may, under the conditions existing in (a) and (b) of this section, declare said taxes to be immediately due and payable.

Approved February 27, 1963.

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## CHAPTER 134

S. B. No. 220.

(Passed March 14, 1963. In effect May 14, 1963.)

### OCCUPATION RESERVE FUND

**An Act Providing for the Disposition of Occupation Taxes; Providing That Taxes Collected Be Credited to the State General Fund; Providing for Transferring the Balance of the "Occupation Tax Reserve Fund" to the State Building Board for Loan Repayment; and Repealing Sections 59-5-67.1, Utah Code Annotated 1953, as Enacted by Chapter 106, Laws of Utah 1959, and 59-5-82, Utah Code Annotated 1953, as Amended by Chapter 120, Laws of Utah 1955.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Occupation Taxes to General Fund.

All occupation taxes imposed and collected under Section 59-5-67 shall



be paid to the state tax commission, and by it promptly paid over to the state treasurer, and by him credited to the state general fund.

**Section 2. Remainder of Fund to Pay Loan Obligation.**

All moneys remaining in the "Occupation Tax Reserve Fund," as provided in Section 59-5-82 on the effective date of this act shall be transferred by the state fiscal officer to the state building board to pay principal loan obligations incurred under Chapter 190, Laws of Utah 1961.

**Section 3. Sections Repealed.**

Sections 59-5-67.1, Utah Code Annotated 1953, as enacted by Chapter 106, Laws of Utah 1959, and 59-5-82, Utah Code Annotated 1953, as amended by Chapter 120, Laws of Utah 1955, are hereby repealed.

Approved March 22, 1963.

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**CHAPTER 135**

H. B. No. 30

(Passed February 14, 1963. In effect May 14, 1963)

**REFUNDING OF EXCESS INHERITANCE TAX PAID**

**An Act Amending Sections 59-12-3, 59-12-5, 59-12-14, 59-12-17, 59-12-20, 59-12-23, 59-12-32 and 59-12-43, Utah Code Annotated 1953, Relating to Inheritance Tax and Providing for Certain Procedural Changes; Also Authorizing the Refunding of Excess Inheritance Tax Paid.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 59-12-3, Utah Code Annotated 1953, is amended to read:

**59-12-3. Gross Estate, How Determined—Election of Executor.**

The value of the gross estate of a decedent shall be determined by including the value at the time of his death, or as of a time nine months after his death if the executor within ten months after such death elects by filing an election with the clerk of the district court and the tax commission, of all property, real or personal, within the jurisdiction of this state, and any interest therein, whether tangible or intangible, which shall pass to any person, in trust or otherwise, by testamentary disposition or by law of inheritance or succession of this or any other state or country, or by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after his death. Provided, (1) property included in the gross estate on the date of death and, within nine months after the decedent's death, distributed by the executor or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, whichever first occurs, instead of its value as of the date nine months after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date), with adjustment for any difference in its value as of the later date not due to mere lapse of time. No deduction

under this title of any item shall be allowed if allowance for such item is in effect given by the valuation under this subdivision. Wherever in any other section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate.

### **Section 2. Section Amended.**

Section 59-12-5, Utah Code Annotated 1953, is amended to read:

#### **59-12-5. Transfers by Right of Survivorship Included—Tenants by the Entirety.**

Whenever property is held in the joint names of two or more persons, or as tenants by the entirety, with right of survivorship, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to the survivor or survivors upon the death of one of such persons, the right of the survivor or survivors to the immediate ownership or possession and enjoyment of such property, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, shall be deemed a transfer taxable under the provisions of this chapter in the same manner as if the whole property to which such transfer relates belonged to the deceased and passed to the survivor or survivors by will. Provided, that where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person except that where the said property is held in the joint names of two or more persons or as tenants by the entirety, with right of survivorship, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to the survivor or survivors upon the death of one of such persons for his immediate ownership or possession and enjoyment, where the survivor or survivors are either the wife, husband or children of the decedent, one-half of said property but not to exceed \$40,000.00 in amount, so held or so deposited shall be taxable and shall be presumed to be the property of said husband, wife or children. Provided further, that where any property has been acquired by gift, bequest, devise or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants.

### **Section 3. Section Amended.**

Section 59-12-14, Utah Code Annotated 1953, is amended to read:

**59-12-14. Special Administrator May Be Appointed for Collection of Tax.**

When property of a decedent is transferred in contemplation of death or intended to take effect in possession or enjoyment at or after his death, or passes to a survivor or survivors by right of survivorship, and no proceedings in probate are instituted, the state tax commission may apply to the court for the appointment of an administrator for the collection of the tax herein provided for, and said property shall be appraised as provided in this chapter. The compensation of such administration shall be fixed, and reasonable attorneys' fee expended by him allowed, by the court.

**Section 4. Section Amended.**

Section 59-12-17, Utah Code Annotated 1953, is amended to read:

**59-12-17. Fix Time and Place for Appraisalment.**

When it appears from the inventory of an estate that there is property which may be subject to the tax, the clerk shall forthwith issue a commission to the appraisers, who shall fix a time and place for appraisalment. Provided, however, that when an estate appears to the state tax commission to be below tax level, or when an estate is composed chiefly of property of fixed or generally known values, or the value thereof is readily determinable, the appraisal thereof by the inheritance tax appraisers may, at the discretion of the state tax commission, be dispensed with and the state tax commission may, in such event at its discretion, accept for inheritance tax purposes values sustained by competent evidence.

**Section 5. Section Amended.**

Section 59-12-20, Utah Code Annotated 1953, is amended to read:

**59-12-20. Objection to Appraisalment—Hearings—Review by District Courts.**

The state tax commission or any person interested in the estate appraised may, before the final determination of the inheritance tax, file objections to the appraisalment. The hearing thereon shall be deemed an action in equity. If upon such hearing the court finds the amount at which the property is appraised is at its value on the market in the ordinary course of trade at time of death, and that the appraisalment was fairly and in good faith made, it shall approve such appraisalment, but if it finds that the appraisalment was made at a greater or less sum than the value of the property in the ordinary course of trade at time of death, or that the same was not fairly or in good faith made, it shall set aside the appraisalment, appoint new appraisers, and so proceed until a fair and just appraisalment of the property is made. Or the court in its discretion shall proceed to hear and determine the amount at which the property is to be appraised and make and enter its order of appraisalment in that behalf, which order shall constitute the true appraisalment in such case.

**Section 6. Section Amended.**

Section 59-12-23, Utah Code Annotated 1953, is amended to read:

**59-12-23. Time for Payment of Tax—Interest—Extension of Same.**

All taxes imposed by this chapter shall be payable to the state tax commission and shall be paid within one year from the death of the decedent. All taxes not paid within one year from the death of the decedent shall draw interest at the rate of eight per cent per annum until paid; provided, that upon good cause shown, the state tax commission may extend the period in which such taxes are to be paid, and may abate the interest thereon for such period of extension.

**Section 7. Section Amended.**

Section 59-12-32, Utah Code Annotated 1953, is amended to read:

**59-12-32. Moneys to Be Covered Into State Treasury.**

All moneys collected by the state tax commission hereunder shall be covered into the state treasury, and the state treasurer shall give his receipt for the same and shall furnish a duplicate copy to the person paying the same.

When it is shown to the satisfaction of the state tax commission that a tax in excess of the correct amount owing has been paid and covered into the state treasury, the state tax commission may initiate a claim for refund of such excess tax, and the state treasurer is authorized to make refund of the excess tax to the executor or other person from whom the payment was received. Such claims shall be initiated within two years from the date said tax was covered into the state treasury.

**Section 8. Section Amended.**

Section 59-12-43, Utah Code Annotated 1953, is amended to read:

**59-12-43. Compounding and Compromising Tax.**

Whenever an estate charged, or sought to be charged, with a tax hereunder is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained, the state tax commission may compromise the tax and interest thereon; but such settlement must be approved by the district court having jurisdiction, or judge thereof, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property.

Approved February 18, 1963.

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**CHAPTER 136**

H. B. No. 192.

(Passed March 14, 1963. In effect May 14, 1963.)

**CONTRIBUTION TO TRUST BY EMPLOYER**

**An Act Amending Section 59-14-4, Utah Code Annotated 1953, as Enacted by Chapter 123, Laws of Utah 1955, and Amended by Chapter 109, Laws of Utah 1959, Relating to the Deductibility of Contributions to a Trust by an Employer or by a Self-employed Individual to the Extent Deductible Under the Internal Revenue Code of the United States: and Amending Section 59-14-49, Utah Code Annotated 1953,**

**Relating to the Non-taxability of the Receipts and Earnings of Such a Trust.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 59-14-4, Utah Code Annotated 1953, is amended to read:

**59-14-4. Gross Income—What Constitutes.**

(1) Gross income includes gains, profits and income derived from salaries, wages or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, trade, businesses, commerce or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property, also from interest, rent, royalties, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits, periodic payments received as alimony only, and income derived from any source whatever.

In computing gross income there shall be deducted the following business expenses:

(a) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any profession, trade or business or in the production of income required to be included in gross income under this chapter, traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a profession, trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for the purposes of the professions, trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(b) All interest paid or accrued within the taxable year on business indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities, the interest or dividends upon which are wholly exempt from taxation under this chapter.

(c) Taxes paid or accrued within the taxable year, on business or business property, except:

(i) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed, but this subsection shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charge.

(ii) Estate, inheritance, legacy and succession taxes.

(d) Losses sustained during the taxable year and not compensated for by insurance or otherwise;

(i) If incurred in trade or business; or,

(ii) If incurred in any transaction entered into for profit though not connected with the trade or business.

(iii) Losses from wagering transactions, but only to the extent of the gains from such transactions.

(e) The basis for determining the amount of deduction for losses sustained, to be allowed under subsection (d) shall be the same as is provided in section 59-14-10 for determining the gain or loss from the sale or other disposition of property.

(f) Debts ascertained to be worthless and charged off within the taxable year, or, in the discretion of the tax commission, a reasonable addition to a reserve for bad debts; and when satisfied that a debt is recoverable only in part, the tax commission may allow such debt to be charged off in part.

(g) A reasonable allowance for the exhaustion, wear and tear of property used in the trade, profession, or business, including a reasonable allowance for obsolescence. In case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustees in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(h) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation and improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the tax commission. In the case of leases, the deduction shall be equitably apportioned between the lessee and the lessor. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

The allowance for depletion shall be thirty-three and one-third per cent of the net income from the property during the taxable year, computed without allowance for depletion, or on the basis provided in subsection (i) of this section, as the taxpayer may elect. The basis which the taxpayer elects, under this subsection, shall be the basis used in subsequent accounting periods and shall be changed thereafter only with the consent of the tax commission.

(i) The basis upon which depletion, depreciation, exhaustion, wear and tear, and obsolescence are to be allowed in respect to any property shall be the same as is provided in section 59-14-10 for the purpose of determining the gain or loss upon the sale or other disposition of such property, except as hereinafter in this section provided.

(j) Contributions made by an employer to a trust for the benefit of some or all of the employees of such an employer to the extent deductible under the Internal Revenue Code of the United States and contributions made by a self-employed individual or by a group of self-employed individuals to a trust for the benefit of one or more of such individuals or for the benefit of some or all of the employees of such individuals to the extent deductible under the Internal Revenue Code of the United States.

(2) The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or in installments but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(b) Amounts received, other than amounts paid by reason of the death of the insured and interest payments on such amounts, under a life insurance, endowment or annuity contract; but if such amounts, when added to amounts received before the taxable year under such contract, exceed the aggregate premiums or consideration paid whether or not paid during the taxable year, then the excess shall be included in gross income. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under this subsection or subsection (2) (a) of this section.

(c) The value of property acquired by gift, bequest, devise or inheritance (but the income from such property shall be included in gross income).

(d) Interest upon the obligations of a state, territory, or any political subdivision thereof, or of the District of Columbia or the obligations of the United States or its possessions, or the obligations or securities issued under the provisions of an Act of Congress, if declared to be exempt by a statute of the United States or the state of Utah.

(e) Amounts received through accident or health insurance, or under workmen's compensation acts, plus the amount of any damages received, whether by suit or agreement on account of death, injuries or sickness.

(f) Benefit payments received under the federal old age and survivors' insurance program.

(g) Benefit payments received under the Federal Employees' Retirement Act.

(3) Whenever in the opinion of the tax commission the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the tax commission may prescribe, conforming as nearly as may be to the best accounting practice in the trade, profession or business and as most clearly reflecting the income.

(4) Distributions by corporations shall be taxable to the shareholders as provided in section 59-14-11.

(5) In the case of a sale or other disposition of property the gain or loss shall be computed as provided in sections 59-14-8, 59-14-9 and 59-14-10.

## **Section 2. Section Amended.**

Section 59-14-49, Utah Code Annotated 1953, is amended to read:

### **59-14-49. Trust Created by Employer for Benefit of Employees—Non-taxability of.**

(a) A trust created by an employer as part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of

his employees, to which contributions are made by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this chapter but the amount actually distributed or made available to any distributee who be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amount paid in by him.

(b) Neither a trust nor the receipts and earnings thereof created by a self-employed individual or a group of self-employed individuals or for the benefit of such self-employed individuals and some or all of the employees of such individuals, to which contributions are made that are deductible under section 59-14-4, (j), shall be taxable, but the amount actually distributed or made available to any distributee who is an employee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amount paid in by him. And the amount actually distributed or made available to any distributee who is a self-employed individual shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds amounts paid in by him for which he received no deduction in the years for which such contributions were made.

### **Section 3. Effective Date.**

This act shall take effect for taxable years beginning after December 31, 1962.

Approved March 21, 1963.

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## **CHAPTER 137**

H. B. No. 191.

(Passed March 14, 1963. In effect January 1, 1962.)

### **ANTI-TRUST STOCK DISTRIBUTION**

**An Act Amending Section 59-14-11, Utah Code Annotated 1953, Providing That Corporate Stock Distributions Required by Antitrust Laws Are Not Distributions of Earnings and Profits Under Utah Income Tax.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 59-14-11, Utah Code Annotated 1953, is amended to read:

##### **59-14-11. Distribution by Corporations.**

Source of Distributions.

(1) For the purposes of this chapter every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before January 1, 1931, may be distributed exempt from tax, after the earnings and profits accumulated after December 31, 1930, have been distributed, but any such tax-free distribution shall be applied against and reduce the basis of the stock provided in section 59-14-10.



#### Distributions in Liquidation.

(2) Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under section 59-14-8, but shall be recognized only to the extent provided in section 59-14-9. In case of amounts distributed in partial liquidation (other than a distribution within the provisions of section 59-14-9 (7) of stock or securities in connection with a reorganization) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits within the meaning of subsection (1) of this section for the purpose of determining the taxability of subsequent distributions by the corporations.

#### Other Distributions.

(3) If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders is not out of increase in value of property accrued before January 1, 1931, and is not out of earnings or profits, then the amounts of such distribution shall be applied against and reduce the basis of the stock provided in section 59-14-10, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property. The provision of this subsection shall also apply to distributions from depletion reserves based on percentage depletion allowed by this chapter.

#### Stock Dividends.

(4) A stock dividend shall not be subject to tax.

#### Cancellation or Redemption of Stock.

(5) If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after December 31, 1930, shall be treated as a taxable dividend.

#### “Amounts Distributed in Partial Liquidation” Defined.

(6) As used in this section the term “amounts distributed in partial liquidation” means the distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

#### Distributions of Stock Pursuant to Order Enforcing the Antitrust Laws.

(7) Any distribution of stock which is made pursuant to the order of any court enforcing the antitrust laws of the United States or of any state shall be a distribution which is not out of the earnings and profits of the distributing corporation, but the value of the stock so distributed shall be applied against and reduce the basis of the stock of the distributing corporation provided in section 59-14-10, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

**Section 2. Effective Date.**

The provision of this act shall be effective for distributions made after December 31, 1961.

Approved March 21, 1963.

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**CHAPTER 138**

H. B. No. 190.

(Passed March 14, 1963. In effect March 21, 1963.)

**COMMON TRUST FUNDS****An Act Amending Section 59-14-48, Utah Code Annotated 1953, Providing for Common Trust Funds, Tax Exemption Thereof.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 59-14-48, Utah Code Annotated 1953, is amended to read:

**59-14-48. Common Trust Funds—Definitions—Exemption from Tax—Not to Be Deemed a Corporation—Computation of Net Income and Net Capital Gain—Admission or Withdrawal of Participant or Interest—Returns—Taxable Year—Segregation of Income.**

The term "common trust fund," as used in this section, means a fund maintained by an incorporated bank or trust company or by a national banking association; (1) exclusively for the collective investment and reinvestment of moneys contributed thereto by such bank, trust company or banking association in its capacity, whether acting alone or in conjunction with another or others, as trustee, executor, administrator, guardian, or conservator; and (2) in conformity with the rules and regulations, prevailing from time to time, of the Comptroller of the Currency of the United States of America pertaining to the collective investment of trust funds by national banking associations.

(b) The common trust fund shall not be subject to any tax imposed by this chapter, and for the purposes of this chapter and of chapter 13 of Title 59, shall not be deemed to be a corporation.

(c) The net income and net capital gain of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual. Each participant in a common trust fund shall include, in computing its net income and net capital gain its proportionate share of the net income and net capital gain of such fund, whether or not distributed to it, and its proportionate share of the net loss and net capital loss of such fund, and the amount so included in the net income and net capital gain of a participant shall be taxable to such participant, or its beneficiaries as if any amount not distributed to the participant during its taxable year actually had been distributed.

(d) No gain or loss shall be realized by a common trust fund upon the admission or withdrawal of a participant, or upon the admission or withdrawal of any interest of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by such participant.

(e) Every incorporated bank or trust company or national banking association maintaining a common trust fund shall make a return under oath for the taxable year of such fund.

(f) If the taxable year of a common trust fund is different from that of a participant therein, the proportionate share of the net income or net capital gain of such fund to be included in computing the net income or net capital gain for such participant for its taxable year shall be based upon the net income or net capital gain of such fund for its taxable year ending within the taxable year of such participant.

(g) If it be impracticable or impossible to segregate the income of a common trust fund, participant or beneficiary, into income to be considered in computing net income and income to be considered in computing net capital gain, the entire amount of such income shall be considered in the computation of net income by the participant or beneficiary, as the case may be and be taxable as such under this article.

#### **Section 2. Effective Date.**

This act shall take effect upon approval.

Approved March 21, 1963.

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### **CHAPTER 139**

H. B. No. 12

(Passed February 19, 1963. In effect May 14, 1963)

#### **INCOME TAX WITHHOLDING**

**An Act Amending Sections 59-14-65, Utah Code Annotated 1953, as Amended by Chapter 124, Laws of Utah 1957, and Chapter 111, Laws of Utah 1959, and Chapter 147, Laws of Utah 1961, and Section 59-14-71, Utah Code Annotated 1953, as Amended by Chapter 124, Laws of Utah 1955, and Chapter 124, Laws of Utah 1957, and Chapters 111 and 112, Laws of Utah 1959, Relating to Income Tax Withholding and Providing for the Facilitation of Tax Refunds and the Adoption of Tax Tables for Use in Tax Withholding.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 59-14-65, Utah Code Annotated 1953, as amended by Chapter 124, Laws of Utah 1957, and Chapter 111, Laws of Utah 1959, and Chapter 147, Laws of Utah 1961, is amended to read:

#### **59-14-65. Revenue Deposit With State Treasurer—Refunds.**

All revenue collected or received by the tax commission under this chapter shall be deposited daily with the state treasurer. The balance of such revenue, subject to the provisions of 59-14-37 and 38 (relating to refunds), shall be periodically distributed and credited to the uniform school fund. Refunds shall be made by the tax commission, and if not claimed within two years from the date of issuance shall revert to the state to be credited to the uniform school fund, and no further claims may be made upon the tax commission for the amounts of such refunds.

**Section 2. Section Amended.**

Section 59-14-71, Utah Code Annotated 1953, as amended by Chapter 124, Laws of of Utah 1955, and Chapter 124, Laws of Utah 1957, and Chapters 111 and 112, Laws of Utah 1959, is amended to read:

**59-14-71. Withholding Tax Provision—Terms—Returns—Rules—Regulations—Refunds.**

(1) (a) Every employer making payment of wages shall deduct and withhold from wages an amount equal to seven per cent of the total amount required to be deducted and withheld by an employer from wages of an employee under the provisions of the Internal Revenue Code of the United States. The amount of tax withheld shall be computed without regard to any other amount required to be withheld thereunder.

(b) Any such employer who is to do business within the state of Utah for a period not to exceed sixty days in the aggregate during any calendar year may be relieved from the requirement provided for herein for such period by furnishing to the tax commission in advance a certificate so certifying. If thereafter said employer should do business within the state of Utah for a period in excess of sixty days, the said employer shall be liable for all the tax which otherwise he would have been required to deduct and withhold; provided that upon a showing of good cause by the employer the tax commission may extend for a period of not to exceed thirty days the time during which the employer is not required to deduct and withhold the tax.

(c) In the event that the tax deducted and withheld under subdivision (a) should prove to be disproportionate to the tax liability, the tax commission may adjust the percentage which, when withheld will, as closely as may be possible, pay the income tax liability imposed by this act.

(d) The tax commission may adopt by regulation tax tables which, when applied to withholding tax, will, as closely as possible, pay the income tax liability imposed by this act. In withholding the tax, an employer shall have the option of applying either the prescribed percentage of federal income tax withheld, or the tax tables adopted by the tax commission.

(2) Terms defined:

(a) The term "employer" means a person or organization transacting business in or deriving any income from sources within the state of Utah for whom an individual performs or performed any services, of whatever nature, and who has control of the payment of wages for such services, or is the officer, agent or employee of the person or organization having control of the payment of wages. It includes any officer or department of state or federal governments, or any political subdivision or agency of the federal or state governments, or any city organized under a charter, or any political body not a subdivision or agency of the state.

(b) The term "employee" means and includes every individual performing services for an employer, either within or without, or both within or without the state of Utah, or any individual performing services within the state of Utah, the performance of which services constitutes, establishes and determines the relationship between the parties as that of employer and employee, and includes officers of corporations,

individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof, or the State of Utah or any county, city, municipality or political subdivision thereof.

(c) The term "wages" means "wages" as defined in the Internal Revenue Code.

(d) "Internal Revenue Code" shall mean the Internal Revenue Code of the United States, as amended, or as hereafter amended, and is to include all amendments thereto.

(3) (a) Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commission the amount required to be deducted and withheld from wages paid to any employee during the preceding calendar quarter under the provisions of this act; provided that the tax commission may alter the time or period for making reports and payments when in its opinion, the tax is in jeopardy, or it may use any other time or period as will facilitate the collection and payment of the tax by the employer.

(b) Every employer shall file a return on forms prescribed by the tax commission with each payment made to the tax commission under this act, showing the total amount of wages paid to his employees, the amount of federal income tax deducted and withheld, the amount of tax under this act deducted and withheld, and such other information as the commission may require.

(c) Every employer shall make an annual return to the commission on forms provided and approved by it, summarizing the total compensation paid, the federal income tax deducted and withheld and the state tax deducted and withheld for each employee during the calendar year and shall file the same with the tax commission on or before the 31st day of January of the year following that for which the report is made. Every employer shall also, in accordance with such regulations, as may be prescribed by the commission, provide each employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for such employee during the preceding calendar year in accordance with the provisions of this act, and said statement made available to the employee on or before the 31st day of January of the year following that for which the report is made.

(d) The employer shall be liable to the tax commission for the payment of the tax required to be deducted and withheld under this act, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this act applicable, any amount deducted or required to be deducted and remitted to the commission under this act shall be considered the tax of the employer and with respect to such amounts he shall be considered the taxpayer.

(e) Every employer who deducts and withholds any amounts under the provisions of this act shall hold the same in trust for the state of Utah for the payment thereof to the commission in the manner and at the time provided for in this act and the state of Utah shall have a lien to secure the payment of any amounts withheld and not remitted as provided herein upon all of the assets of the employer and all property,

including stock in trade, business fixtures and equipment, owned or used by the employer in the conduct of his business, so long as any delinquency continues, which said lien shall be prior to any lien of any kind whatsoever including existing liens for taxes.

(f) As a condition precedent to the doing of business in Utah, an employer may be required by the tax commission to post with the commission a corporate bond in such amount as is reasonably calculated to insure the payment to the state of taxes deducted and withheld from wages, but not to exceed \$5,000.00.

(g) Insofar as they are not inconsistent with the provisions of this section, all of the provisions in the Individual Income Tax Act relating to records, penalties, interest, deficiencies, redetermination of deficiencies, overpayments, refunds, assessments, and venue shall be available to the tax commission for the enforcement of the provisions of this act.

(4) The commission is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this act, and to make such agreements with the United States government as are necessary to provide for the deducting and withholding of tax from wages of federal employees in the state of Utah.

Approved February 20, 1963.

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## CHAPTER 140

H. B. No. 144.

(Passed March 14, 1963. In effect July 1, 1963.)

### SALES TAX EXEMPTIONS ON TRADE-INS

**An Act Amending Section 59-15-2, Utah Code Annotated 1953, as Amended by Chapter 125, Laws of Utah 1957, Section 59-15-4, Utah Code Annotated 1953, as Amended by Chapter 113, Laws of Utah 1959, Chapter 148, Laws of Utah 1961, and 59-16-2, Utah Code Annotated 1953, as Amended by Laws of Utah 1955, Chapter 126, as Amended by Chapter 128, Laws of Utah 1957, and Section 59-16-4, Utah Code Annotated 1953, relating to the Sales and Use Taxes; Providing That the Sales and Use Taxes Shall Not Apply to Exchanges of Tangible Personal Property for Other Than Money Consideration; and Deleting an Exemption on Sales Already Taxed Outside the State.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Sections Amended.**

Section 59-15-2, Utah Code Annotated 1953, as amended by chapter 125, Laws of Utah 1957, and Section 59-15-4, Utah Code Annotated 1953, as amended by Chapter 113, Laws of Utah 1959, Chapter 148, Laws of Utah 1961, Section 59-16-2, Utah Code Annotated 1953, as amended by Laws of Utah 1955, Chapter 126, as amended by Chapter 128, Laws of Utah 1957, and Section 59-16-4, Utah Code Annotated 1953, are amended to read:

#### **59-15-2. Definitions—Scope—Exemption—Retail Sales—Wholesale Sales.**

(a) The term "person" includes any individual, firm, copartner-

ship, joint adventure, corporation, estate or trust, or any group or combination acting as a unit and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(b) The term "sale" or "sales" includes installment and credit sales every closed transaction constituting a sale, and also includes the sale of electrical energy, gas, services or entertainment taxable under the terms of this act. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall be deemed a sale. An exchange of tangible personal properties for other than money shall not be deemed a sale for purposes of this act, except that in any transaction wherein both tangible personal property and money are exchanged for other tangible personal property that part of the exchange which is in money shall be deemed a sale.

(c) The term "wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.

(d) The term "wholesale" means a sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers or retailers to users or consumers not for resale, except as otherwise hereinafter specified.

(e) The term "retailer" means a person doing a regularly organized retail business in tangible personal property, and selling to the user or consumer and not for resale, and includes commission merchants and all persons regularly engaged in the business of selling to users or consumers within the state of Utah; but the term "retailer" does not include farmers, gardeners, stockmen, poultrymen or other growers or agricultural producers, except those who are regularly engaged in the business of buying or selling for a profit. The term "retail sale" means every sale within the state of Utah by a retailer or wholesaler to a user or consumer, except such sales as are defined as wholesale sales or otherwise exempted by the terms of this act; but the term "retail sale" is not intended to include isolated nor occasional sales by persons not regularly engaged in business, nor seasonal sales of crops, seedling plants, garden or farm or other agricultural produce by the producer thereof, or the return to the producer thereof of processed agricultural products, provided, however, that no sale of a motor vehicle shall be deemed isolated or occasional for the purposes of this act.

(f) Each purchase of tangible personal property or product made by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which enters into and becomes an ingredient or component part of the tangible personal property or product which he manufactures, or compounds, and the container, label or the shipping case thereof, shall be deemed a wholesale sale and shall be exempt from taxation under this act; and for the purpose of this act, poultry, dairy and other livestock feed, and the components thereof, and all seeds and seedlings, are deemed to become component parts of the eggs, milk, meat and other livestock products,

plants and plant products, produced for resale; and each purchase of such feed or seed from a wholesaler, or retailer as well as from any other person shall be deemed a wholesale sale and shall be exempt from taxation under this act; provided also that sprays and insecticides used in the control of insect pests, diseases and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be deemed as wholesale and exempt from taxation under this act.

Each purchase of service as defined in section 59-15-4 (b) by a person engaged in compounding and selling a service which is subject to a tax under section 59-15-4 (b) and actually used in compounding such taxable service shall be deemed a wholesale sale and shall be exempt from taxation under this act.

(g) When right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if an outright sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor or lessor upon the rentals paid.

(h) The word "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(i) For the purpose of this act the term "admission" includes seats and tables reserved or otherwise, and other similar accommodations and charges made therefor and "amount paid for admission" means the amount paid for such admission, exclusive of any admission tax imposed by the federal government or by this act.

(j) The term "purchase price" means the price to the consumer exclusive of any tax imposed by the federal government or by this act.

#### 59-15-4. Excise Tax—Rate.

From and after the effective date of this act there is levied and there shall be collected and paid:

(a) A tax upon every retail sale of tangible personal property made within the state of Utah equivalent to 2½ per cent of the purchase price paid or charged, except that where a person takes, as a trade-in for part payment of the merchandise sold, tangible personal property other than money, the tax shall be computed and paid only upon the net difference between the selling price of the merchandise sold and the amount of the trade-in allowance. The sale of coal, fuel oil and other fuels shall not be subject to the tax except as hereinafter provided.

(b) A tax equivalent to 2½ per cent of the amount paid:

(1) To common carriers or telephone or telegraph corporations as defined by section 54-2-1, Utah Code Annotated 1953, whether such corporations are municipally or privately owned, for all transportation, telephone service, or telegraph service; provided, that said tax shall not apply to intrastate movements of freight and express or to street railway fares or to the sale of newspapers, and newspaper subscriptions.

(2) To any person as defined in this act including municipal corporations for gas, electricity, heat, coal, fuel oil or other fuels sold or



furnished for domestic or commercial consumption. None of the provisions of this subsection shall apply to electric power plant systems owned and operated by cooperative or nonprofit corporations engaged in rural electrification.

(c) A tax equivalent to 2½ per cent of the amount paid for all meals furnished by any restaurant, eating house, hotel, drug store, club or other place.

(d) A tax equivalent to 2½ per cent of the amount paid for admission to any place of amusement, entertainment or recreation.

(e) A tax equivalent to 2½ per cent of the amount paid or charged for all services or repairs or renovations of tangible personal property, or for installation of tangible personal property rendered in connection with other tangible personal property.

(f) A tax equivalent to 2½ per cent of the amount paid or charged for tourist home, hotel, motel, or trailer court accommodations and services; provided this subsection shall not apply to the amount paid or charged for tourist home, motel, hotel or trailer court where residency is maintained continuously under the terms of a lease or similar agreement for a period of not less than thirty days.

(g) A tax equivalent to 2½ per cent of the amount paid or charged for laundry and dry cleaning services.

#### 59-16-2. Definitions.

The following words, terms and phrases when used in this act have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

(a) "Storage" means and includes any keeping or retention in this state for any purpose except sale in the regular course of business of tangible personal property purchased from a retailer.

(b) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

(c) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a cash consideration. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall be deemed a purchase.

(d) "Sales price" means the total cash sum for which tangible personal property is sold, including any services that are a part of the sale, valued in money, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expenses whatsoever; provided, cash discounts allowed and taken on sales shall not be included, or shall the sales price include the amount charged for labor or services rendered in installing, applying, remodeling or repairing property sold.

(e) "Person" means and includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, dis-

strict, or other political subdivision thereof, or any other group or combination acting as a unit, and the plural as well as the singular number.

(f) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property for storage, use or other consumption; provided, when in the opinion of the commission it is necessary for the efficient administration of this act to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the commission may so regard them and may regard the dealers, distributors, supervisors or employers, as retailers for purposes of this act.

(g) "Commission" means the state tax commission of Utah.

(h) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(i) "Tax" means the tax payable by the person storing, using or consuming tangible personal property, the storage, use or consumption of which is subject to tax or the aggregate amount of taxes due from every retailer making sales of tangible personal property for storage, use or other consumption in this state during the period for which he is required to report his collections, as the context may require.

(j) "Taxpayer" shall include every retailer, as herein defined, and every person storing, using or consuming tangible personal property, the storage, use or consumption of which is subject to the tax imposed by this act when such tax was not paid to a retailer.

(k) When the right to continuous possession or use of any article of tangible personal property is granted under a lease or contract, such lease or contract shall be considered the storage, use or other consumption of such article and the tax shall be computed and paid upon the rentals paid.

#### 59-16-4. Exemptions.

The storage, use or other consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this act:

(a) Property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by chapter 63, Laws of Utah 1933, and any amendments made or which may be made thereto.

(b) Property, the storage, use or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States of America or of this state; property stored in the state of Utah for resale, consumption or use in some state other than the state of Utah.

(c) Property brought into this state by a nonresident for his or her own personal use or enjoyment while within the state.

(d) Property, the gross receipts from the sale, distribution or use of which are now subject to a sale or excise tax under the laws of this state.

(e) Mineral bullion, mineral concentrates or mineral precipitates,

when sold by the producer or refiner thereof for storage, use or other consumption in this state.

(f) Property stored, used or consumed by the United States government or the state of Utah, and their departments, institutions and political subdivisions.

(g) Property purchased for resale in this state, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of business, and for the purposes of this act, poultry, dairy and other livestock feed, and the components thereof and all seeds or seedlings, are deemed to become component parts of the eggs, milk, meat and other livestock products, plants and plant products, produced for resale; and each purchase of such feed or seed shall be exempt from taxation under this act.

(h) Property which enters into and becomes an ingredient or component part of the property which a person engaged in the business of manufacturing, compounding for sale, profit or use manufactures or compounds, or the container, label or the shipping case thereof.

**Section 2. Effective Date.**

This act shall take effect July 1, 1963.

Approved March 21, 1963.

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**CHAPTER 141**

S. B. No. 91.

(Passed March 14, 1963. In effect July 1, 1963.)

**SALES AND USE TAXES**

**An Act Relating to State Sales and Use Taxes and Enacting New Sections to Be Known as 59-15-4.5 and 59-16-3.5, Utah Code Annotated 1953, Providing for a One-half of One Per Cent Increase in the State Sales and Use Taxes and Designating the Use for Which the Proceeds From Said Tax Increase Shall Be Made and the Length of Time During Which Said Tax Increase Shall Apply and the Method of Allocating the Tax Revenues Collected.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Enacted.**

Section 59-15-4.5, Utah Code Annotated 1953, is enacted to read:

**59-15-4.5. Additional Sales Tax for State Buildings.**

(1) Commencing July 1, 1963 and ending June 30, 1969, there is hereby levied and there shall be paid and collected in the same manner as provided in the Sales Tax Act, an additional one-half of one per cent sales tax on all classes of sales listed in Section 59-15-4.

(2) The sales and use tax revenue collected pursuant to this section and Section 59-16-3.5 after August 31, 1963 to and including August 31, 1969 shall be earmarked for use by the Utah state building board in constructing or otherwise acquiring buildings or facilities for state public institutions and to acquire and improve sites therefore and to furnish and equip such buildings and to provide parking facilities and to remodel, alter, repair and improve existing buildings and facilities and to repay

loans for such purposes authorized by the thirty-fourth legislature and to repay either tax anticipation notes or certificates of payment which may be executed by the state in facilitating the financing of such improvements.

(3) To facilitate the collection and allocation of the tax revenue levied herein and in section 59-16-3.5, there shall be allocated for the use of the state building board, as above provided, an amount equal to sixteen and two-thirds per cent of all sales and use tax revenue collected by the tax commission after August 31, 1963 to and including August 31, 1969.

#### **Section 2. Section Enacted.**

Section 59-16-3.5, Utah Code Annotated 1953, is enacted to read:

#### **59-16-3.5. Additional Use Tax for State Buildings.**

(1) Commencing July 1, 1963 and ending June 30, 1969 there is hereby levied and there shall be paid and collected in the same manner as provided in the Use Tax Act an additional one-half of one per cent use tax on all classes of use, storage and consumption listed in section 59-16-3.

(2) The provisions of subsections 59-15-4.5 (2) and (3) relating to the collection, earmarking and allocation of sales and use tax revenue shall apply to the revenue levied and collected under the provisions of this section.

Approved March 22, 1963.

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## **CHAPTER 142**

H B. No. 38.

(Passed March 1, 1963. In effect May 14, 1963.)

### **SALES TAX CREDITED TO GENERAL FUND**

**An Act Amending Section 59-15-21, Utah Code Annotated 1953, as Amended by Chapter 148, Section 3, Laws of Utah 1961 and Section 59-16-25, Utah Code Annotated 1953, as Amended by Chapter 148, Section 4, Laws of Utah, 1961, Eliminating the Provisions Requiring That Certain Portions of Revenues Derived From Application of Sales and Use Taxes Be Credited to the Uniform School Fund.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 59-15-21, Utah Code Annotated 1953, is amended to read:

#### **59-15-21. Disposition of Revenue—General Fund.**

All revenue collected or received by the state tax commission from the licenses and taxes imposed by this act shall be deposited daily with the state treasurer to be credited by him to the state general fund.

#### **Section 2. Section Amended.**

Section 59-16-25, Utah Code Annotated 1953, as amended by Chapter 148, Section 3, Laws of Utah 1961, is amended to read:

**59-16-25. All Revenues to General Fund.**

All revenues collected under the provisions of this act shall be deposited daily with the state treasurer and be credited to the state general fund.

Approved March 6, 1963.

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**CHAPTER 143**

H. B. No. 136.

(Passed March 14, 1963. In effect May 14, 1963.)

**TOBACCO TAX**

**An Act Amending Sections 59-18-1, and 59-18-2, Utah Code Annotated 1953, and Section 59-18-4, Utah Code Annotated 1953, as Amended by Chapter 34, Laws of Utah 1953, and Chapter 6, Laws of Utah 1959, and Section 59-18-5, Utah Code Annotated 1953, as Amended by Chapter 6, Laws of Utah 1959, and Section 59-18-6, Utah Code Annotated 1953, and Section 59-18-10, Utah Code Annotated 1953, as Amended by Chapter 34, Laws of Utah 1953, and Chapter 6, Laws of Utah 1959, and Section 59-18-13, Utah Code Annotated 1953, Providing for an Increase in the Cigarette and Cigarette Paper Tax and for a Tax on All Tobacco Products, and Repealing Section 59-18-4.1, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 59-18-1, Utah Code Annotated 1953, is amended to read:

**59-18-1. Cigarettes—Licensing Sale of—Licensee—Duration of License—Non-Transferability of—Revocation—Grounds for—Penalty.**

It shall be unlawful for any person to barter, sell or offer for sale in this state, cigarette or cigarette papers, without first having obtained a license therefor, which license may be granted and issued by the state tax commission, and shall be in force and effect until the 30th day of June following the date of issue, unless sooner revoked. It shall be granted only to a person owning or operating the place from which such sales are to be made, and in case sales are made at two or more separate places by such person, a separate license for each place of business shall be required; provided further, that any common carrier shall be required to obtain one license only for sales on all trains operated by such carrier within this state, and for the purpose of this act, all trains of such common carriers shall be considered as one place of business. Each license shall be numbered and shall show the residence and place of business of the licensee and shall not be transferable. The state tax commission shall on reasonable notice and after a hearing, revoke the license of any person violating any provisions of this title, and no license can be issued to such person within a period of two years thereafter. Any person engaging in the business of selling or offering for sale within this state

any of the products referred to above, without having secured a license therefor shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty dollars (\$20) nor more than two hundred ninety-nine dollars (\$299), or by imprisonment not exceeding six months, or by both such fine and imprisonment for each offense; provided, that all manufacturers, jobbers, distributors and retailers of all tobacco products, except cigarettes, which are responsible for collection of tax on tobacco products pursuant to section 59-18-5(3) shall register with the state tax commission.

**Section 2. Section Amended.**

Section 59-18-2, Utah Code Annotated 1953, is amended to read:

**59-18-2. Annual Fees.**

No license shall be issued until the applicant shall have paid to the state tax commission an annual license fee of \$10.00 per year or fraction thereof for the sale of cigarettes and cigarette papers. No fee will be charged for registration of manufacturers, jobbers, distributors or retailers of tobacco products in addition to the cigarette license, if required.

**Section 3. Section Amended.**

Section 59-18-4, Utah Code Annotated 1953, as amended by Chapter 34, Laws of Utah 1953, and Chapter 6, Laws of Utah 1959, is amended to read:

**59-18-4. Excise Tax.**

There is hereby imposed and there shall be collected by and paid to the state tax commission upon the sale, use, storage or consumption of the following articles in the state of Utah, a tax at the rate hereinafter set forth, such tax to be paid by the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer:

1. On cigarettes weighing not more than three pounds per thousand, four mills on each cigarette;
2. On cigarettes weighing more than three pounds per thousand, eight mills on each such cigarette;
3. On cigarette papers, or wrappers, or any papers made or prepared for the purpose of making cigarettes, made up in packages, books, or sets; on each such package, book, or set one cent for each fifty papers or fractional part thereof.
4. On tubes one and one-half cent for each fifty paper tubes or fractional part thereof.
5. On all tobacco products, except cigarettes, twenty-five per cent of the manufacturer's sales price, which shall be the amount charged by the manufacturer less all discounts, but including original Utah destination freight charges, whether the product is shipped f.o.b. origin or f.o.b. destination and regardless of who pays the freight charge.

**Section 4. Section Amended.**

Section 59-18-5, Utah Code Annotated 1953, as amended by Chapter 6, Laws of Utah 1959, is amended to read:

**59-18-5. Stamps to Be Affixed—Time—Exceptions—Bonds—Violation—Penalty—Unstamped Containers as Evidence.**

(1) The taxes imposed on cigarettes and cigarette papers by this chapter shall be paid by affixing stamps in the manner and at the time herein set forth, unless otherwise required by regulation of the state tax commission.

Such stamps shall be securely affixed to each individual package within seventy-two hours after any of the cigarettes or cigarette papers are received by any wholesaler, distributor, or retailer, within this state; provided however, that such commodities must be stamped before being sold within the state. In the event any such products are manufactured within the state, they shall be stamped by the manufacturer when and as sold.

The state tax commission, may, in its discretion, where it is practical and reasonable for the enforcement of the collection of taxes provided hereunder promulgate such rules and regulations as to permit any of the articles, upon which an excise is imposed by this chapter, to remain unstamped in the hands of wholesaler or distributor until the original case or crate is broken, unpacked, or sold, or it may permit any manufacturer, wholesaler, or distributor to sell and export, to a regular dealer in such articles outside the state, any of such articles, without affixing the stamps thereto, as herein required; provided however, that where such articles are allowed to remain unstamped in the hands of such wholesaler or distributor, the state tax commission may require a surety bond from such wholesaler or distributor, such bond to be executed by a surety company authorized to do business in this state, and conditioned to secure the payment of all taxes and penalties provided in this chapter.

It is the intent and purpose of this chapter to require all manufacturers, jobbers, distributors, wholesalers and retail dealers to securely affix the stamps provided for in this section to the packages or containers or products referred to in section 59-18-1, but when the stamps have been affixed as required herein, no further or other stamp shall be required under the provisions of this chapter, regardless of how often such articles may be sold or resold in this state. Any person failing properly to affix and cancel stamps to the products enumerated in section 59-18-1, as provided herein or by regulations promulgated by the state tax commission as provided in this chapter, may be required by the commission to pay as a part of the tax imposed hereunder, a penalty of twenty-five dollars (\$25) for each offense, to be assessed and collected by the state tax commission as provided in section 59-18-15. Each article, package or container not having proper stamps affixed thereto as herein required shall be deemed a separate offense. The presence of any package or container in the place of business of any person required by the provisions of this chapter to stamp the same shall be prima facie evidence that they are intended for sale and subject to tax under this chapter.

(2) The taxes imposed on all tobacco products, except cigarettes, shall be remitted to the state tax commission together with quarterly returns as prescribed by it. Said returns shall be due and payable to the state tax commission quarterly on or before the last day of the month

succeeding each calendar quarterly period, the first of such quarterly periods being the period commencing on July 1, 1963. It is the purpose and intent of this chapter to impose a tax at the time any manufacturer, jobber, wholesaler, retailer or any other person brings, or causes to be brought into this state from without the state, or makes, manufactures or fabricates within the state any tobacco product, except cigarettes and cigarette papers in this state for sale in this state.

Any tax previously imposed by this act and remitted pursuant to this act on any tobacco product except cigarettes may be allowed and claimed as a credit for any part of tobacco products which may be destroyed or returned to original manufacturer, jobber, wholesaler, retailer or any other person, through such regulation and forms as shall be prescribed by the state tax commission.

Every manufacturer, jobber, wholesaler, retailer or any other person selling tobacco products to persons other than ultimate consumers must furnish with each sale an itemized invoice showing the seller's name and address, the name and address of the purchaser, the date of sale, the name and price of the product and the discount, if any. A notation should be made to the effect that the price includes or does not include the tax. Copies of this invoice must be retained by the seller and the purchaser and must be available for inspection by the state tax commission or its agent for a period of three years.

The state tax commission shall, as a prerequisite to registering any manufacturer, jobber, wholesaler, retailer or any other person subject to the provisions of this subsection, require such manufacturer, jobber, wholesaler, retailer or such other person to post a bond in such form and for such amount as the tax commission may determine, provided further, that if such person shall be required to post a bond under section 59-18-3, the bond may be a combination, the minimum amount of which shall be \$1,000.00.

Any manufacturer, jobber, wholesaler, retailer or any other person subject to the provisions of this subsection who shall fail to pay the tax prescribed by this chapter or shall fail to pay such tax on time, or shall fail to file a return required by this act, shall pay, in addition to the tax, a penalty in the amount of twenty-five per cent of the tax due, plus interest at the rate of six per cent per annum, provided further, that the minimum penalty shall be \$10.00 for each offense.

(3) Any person who causes untaxed products, subject to the tax imposed by this act, to be brought into this state for use or other consumption, must file with the state tax commission, on such forms as may be prescribed by it, a statement showing the quantity and description of such products and pay the tax imposed by this act on all such products. This statement must be filed and the tax must be paid no later than fifteen days from the date of the import of the untaxed products, provided further, that if any person regularly imports such products, they may, upon application with the state tax commission, arrange to file reports on a monthly basis and pay the tax on all products imported during the previous calendar month on or before the fifteenth day of the month following.



No report will be required from nonresidents or tourists who import any products taxed by this act if such products imported are for their own use or consumption while in this state. Also, no such report will be required of persons who are liable for the payment of taxes in the manner set forth in subsections 1 and 2 of this section.

Any person liable for the payment of such tax who fails to file such report or pay the tax on time must pay, in addition to the tax a penalty of twenty-five per cent of the amount of the tax, and in addition to any other penalties prescribed by this act, may be required to pay a penalty of \$10.00 for each offense.

#### **Section 5. Section Amended.**

Section 59-18-6, Utah Code Annotated 1953, is amended to read:

#### **59-18-6. Violations—Goods Declared Contraband—Seizures—Sale.**

Any cigarettes and cigarette papers found at any point in this state which shall have been within this state for a period of seventy-two hours or longer in the possession of any wholesaler, distributor or retailer or having been sold by such wholesaler, distributor or retailer not having affixed to the package or container the stamps as above provided, are hereby declared to be contraband goods and the same may be seized by the state tax commission or its employees or by any peace officer of the state of Utah, or any political subdivision thereof, without a warrant. Such goods shall be delivered to the state tax commission for sale at public auction to the highest bidder, after due advertisement. The state tax commission, before delivering any of said goods so seized and sold, shall require the person receiving said goods to affix the proper amount of stamps to the individual packages or containers as above provided.

#### **Section 6. Section Amended.**

Section 59-18-10, Utah Code Annotated 1953, as amended by Chapter 34, Laws of Utah 1953, and Chapter 6, Laws of Utah 1959, is amended to read

#### **59-18-10. Stamps—Preparation—Distributors—Redemptions—Refunding—Dealers Exempt—Discount Allowed—Trafficking Is Forbidden.**

The state auditor is hereby authorized to have prepared, according to such specifications and designs, and in such denominations as may be submitted to him by the state tax commission, stamps for use on packages and containers of any of the products enumerated in section 59-18-1, the sale of which is subject to tax under this chapter, and upon requisition from the state tax commission, the state auditor shall deliver to its order the stamps designated in such requisition and shall keep an accurate record of all stamps coming into and leaving his hands. The cost of said stamps shall be charged to any appropriation made to defray the administration of this chapter.

The state tax commission shall sell the stamp herein provided for only to persons holding licenses issued as provided in this chapter and the moneys received from the sale of such stamps in excess of one mill

per cigarette shall be turned into the general fund of the state. The money received from the first mill levied on each cigarette shall be allocated to the uniform school fund. All other moneys received from penalties, fees and taxes provided by this chapter shall be credited to the general fund. The state tax commission may deliver stamps in face value not to exceed 90% of the penal sum of licensee's bond to any licensee without payment therefor; provided that licensee shall make payment for stamps so delivered upon consignment within sixty days of the date stamps were delivered to licensee. Unused stamps may be redeemed, within two years after such stamps shall have been purchased from the state tax commission, by presentation to the state tax commission of a claim therefor, by the person to whom they are originally sold, accompanied by the unused stamps. The state tax commission shall certify said claim with its approval to the state auditor, who shall draw a warrant upon the state treasurer for the payment of such claim.

When any article, the sale of which is taxable under this chapter, and upon which such taxes have been paid, are sold and shipped to a regular dealer in such articles in another state, the seller in this state, if he be a licensed dealer in such products, shall be entitled to a refund of the actual amount of the taxes which he has paid, upon condition that the seller in this state shall make affidavit that the goods were so sold and shipped, and that he shall furnish from the purchaser a written acknowledgment that he has received such goods and the amount of stamps thereon, together with the name and address of the purchaser. The taxes shall be refunded in the manner provided above for the redemption of unused stamps.

When such articles, upon which no tax has been paid, are sold for export, and in due course so exported, to a regular dealer in such articles in another state, the wholesaler or distributor in this state shall be exempt from the payment of any tax upon the sale of such articles, if and when he shall have furnished such proof of said sale and exportation as the state tax commission may require.

The state tax commission shall allow a discount of four per cent (4%) to any licensee upon the entire amount of each single purchase of stamps amounting to twenty-five dollars (\$25) or over.

It shall be unlawful for any person to sell or dispose of such stamps to any other person whomsoever, except that whenever a person owns or operates more than one place of sale, stamps may be distributed to the various places of sale by the main office, but each place of sale must have a separate license and cancellation stamp.

#### **Section 7. Section Amended.**

Section 59-18-13, Utah Code Annotated 1953, is amended to read:

#### **59-18-13. Imported Products—Duplicate Invoices or Receipts Furnished Tax Commission.**

All persons dealing in the products referred to in section 59-18-1, purchasing or receiving such commodities from without the state, whether the same shall have been delivered through a wholesaler, distributor or jobber in this state, or by drop shipment or otherwise, shall, within ten

days after receipt of the same, mail or deliver a duplicate invoice of all such purchases or receipts to the state tax commission upon request of the tax commission. Failure to furnish duplicate invoices or receipts as requested shall be a misdemeanor.

**Section 8. Section Repealed.**

Section 59-18-4.1, Utah Code Annotated 1953, is hereby repealed.

**Section 9. Effective Date.**

This act shall take effect July 1, 1963.

Approved March 22, 1963.

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**CHAPTER 144**

H. B. No. 281.

(Passed March 14, 1963. In effect May 14, 1963.)

**POSSESSION OF TOBACCO AND ALCOHOL**

**An Act Relating to the Acquisition and Possession of Tobacco and Allied Products by Persons Under Age 19 and Amending Section 53-14-6, Utah Code Annotated 1953, Section 59-18-18, Utah Code Annotated 1953, Amending Section 59-18-12, Utah Code Annotated 1953, and Amending Section 76-11-2, Section 76-42-4 and Section 76-42-5, Utah Code Annotated 1953, as Amended by Chapter 167, Laws of Utah 1957; Providing for a Change in the Age of Persons Who Can Acquire or Possess Tobacco or Its Allied Products; Providing a Penalty for Improper Use of Tobacco Vending Machines and Requiring Conspicuous Posting of the Act or Parts of the Act on the Machine or Premises in Which the Machine Is Located.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 59-18-18, Utah Code Annotated 1953, is amended to read:

**59-18-18. Tobacco Vending Machine Accessible to Minors—Unlawful.**

(a) Any person who maintains after June 30, 1963, in his place of business a tobacco vending machine accessible to persons under the age of nineteen or provides any method of self-help for the disposition to persons under the age of nineteen by gift, sale or otherwise of any cigarette or cigarette paper or wrapper, or any paper made or prepared for the purpose of making cigarettes or tobacco in any form whatsoever, is guilty of a misdemeanor. Cigarette vending machines shall be deemed accessible to persons under age of nineteen except where they are in locations where persons under age of nineteen are prohibited; where the machine can be operated only by the owner or his employee, either directly or through a remote control device which is inaccessible to the customer and must be operated for each sale; in private industrial locations where only adult employees are customarily allowed, provided such locations are inaccessible to persons under age of nineteen, and in adult private clubs, provided that such locations are inaccessible to persons under age of nineteen.

(b) Every person, firm or corporation which sells, or gives, or in any way furnishes to another person who is in fact under the age of nineteen years, any tobacco, cigarette or cigarette papers or any other preparation of tobacco in violation of Section 59-18-18, Utah Code Annotated 1953, upon conviction thereof, shall be punished for the first offense by a fine of not less than \$25.00 or not more than \$100.00 or by imprisonment of not more than sixty days; and for the second offense by a fine of not less than \$50.00 nor more than \$200.00, or by imprisonment for not more than ninety days; and for each subsequent offense by a fine of not less than \$100.00 and not more than \$299.00 or by imprisonment for not less than ninety days, or both.

(c) Every person, firm or corporation which owns a tobacco products machine operating within the State of Utah shall, within ninety days after this act becomes effective, post and maintain on each machine a decal of not less than six inches by three inches, which shall contain the following: "WARNING: PURCHASE BY, or POSSESSION BY, or SALE TO a person UNDER NINETEEN YEARS OF AGE, of tobacco products is a violation of:

Penal Code, 76-42-5, Utah Code Annotated 1953,  
Penal Code, 76-42-4, Utah Code Annotated 1953,  
Civil Code, 59-18-12, Utah Code Annotated 1953,  
Civil Code, 59-18-18, Utah Code Annotated 1953.

#### **Section 2. Secretary of State Print Act.**

The Secretary of State is hereby authorized to have printed sufficient copies of this act to enable him to furnish dealers in tobacco with copies thereof upon their request for same.

#### **Section 3. Section Amended.**

Section 59-18-12, Utah Code Annotated 1953, is amended to read:

##### **59-18-12. Furnishing to Minors Forbidden.**

Any person who furnishes to any person under the age of nineteen by gift, sale or otherwise, any cigarette or cigarette paper or wrapper or any paper made or prepared for the purpose of making cigarettes, or any tobacco of any kind whatsoever, is guilty of a misdemeanor.

#### **Section 4. Section Amended.**

Section 76-42-4, Utah Code Annotated 1953, as amended by Chapter 167, Laws of Utah 1953, is amended to read:

##### **76-42-4. Sales of Tobacco or Narcotics to Minors.**

Any person who sells, gives or furnishes any cigar, cigarette or tobacco in any form to any person under nineteen years of age is guilty of a misdemeanor.

#### **Section 5. Section Amended.**

Section 76-42-5, Utah Code Annotated 1953, as amended by Chapter 167, Laws of Utah 1957, is amended to read:

##### **76-42-5. Purchase or Possession by Minors.**

Any person under the age of nineteen years who buys, accepts, or has

in his or her possession any cigar, cigarette, or tobacco in any form is guilty of a misdemeanor, or shall be termed a delinquent child, as the case may be.

**Section 6. Section Amended.**

Section 53-14-6, Utah Code Annotated 1953, is amended to read:

**53-14-6. Possession of Alcohol and Tobacco by Minors Prohibited—  
Need for Instructions.**

It is the obligation of society to conserve and protect the health and welfare of its members. Consistent with this view of the state of Utah prohibits the sale, gift, use or possession of alcoholic beverages by persons under twenty-one years of age and prohibits the sale, gift, use or possession of tobacco by persons under nineteen years of age and also requires instruction in physiology and hygiene in the public schools with special reference to the harmful effects upon the human body of alcoholic beverages, tobacco and narcotics. Changed social and economic conditions now prevent adequate employment for persons under twenty-one years of age and make necessary for them a longer period of training and protection. The radio, the moving picture and the press are being used by profit seeking individuals and corporations to enhance the sedative and narcotic effects of alcoholic beverages and tobacco thus deceiving young persons into destructive habits of life. The cure for this growing evil is largely one of education to both youth and adults.

It therefore becomes necessary not only to instruct pupils in the public schools and all other persons regarding the harmful effects of all forms of narcotics upon the human body, but also to deflate the supposed value of such stimulants by means of discussions, decisions and activities and by the volunteer uniting of community effort, thereby leading our citizens into habits of healthful and happy living.

**Section 7. Section Amended.**

Section 76-11-2, Utah Code Annotated 1953, is amended to read:

**76-11-2. Proprietors Not to Allow Minors to Use Place of Business—  
Place of Business Defined.**

It is a misdemeanor for the proprietor of any place of business to knowingly permit persons under age nineteen to frequent such place of business while they are using tobacco. The term "place of business" as here used shall apply to any and all such places as shops, stores, factories, public garages, offices, theaters, recreation and dance halls, pool rooms, cafes, cafeterias, cabarets, restaurants, hotels, lodging houses, street cars, interurban and railway passenger coaches and waiting rooms.

**Section 8. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved March 21, 1963.

**SECURITIES****CHAPTER 145**

S. B. No. 11

(Passed March 11, 1963. In effect May 14, 1963)

**UNIFORM SECURITIES ACT**

**An Act Relating to Securities; Providing for the Prohibition of Fraudulent Practices; Providing for the Registration of Broker-Dealers, Agents, Investment Advisers, and Securities; Providing Civil and Criminal Remedies; and Repealing the Securities Act, Chapter 1, Title 61, Utah Code Annotated 1953, as Amended by Chapter 129, Laws of Utah 1957, and Chapter 149, Laws of Utah 1961.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Chapter Enacted.**

Chapter 1, Title 61, Utah Code Annotated 1953, is enacted to read:

**Section 61-1-1. False Statements Unlawful.**

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material of fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

**Section 61-1-2. Investment Adviser—Unlawful Acts.**

(1) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities of their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(a) to employ any device, scheme, or artifice to defraud the other person, or

(b) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(2) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing

(a) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subdivision (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subdivision (b), includes

any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(3) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if

(a) the commission by rule prohibits custody; or

(b) in the absence of rule, the investment adviser fails to notify the commission that he has or may have custody.

#### **Section 61-1-3. Registration of Broker-Dealer, Agent, Investment Adviser.**

(1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this act.

(2) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with the particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commission.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless he is so registered under this act or he is registered as a broker-dealer without the imposition of a condition under section 61-1-6 (3) (e), or his only clients in this state are investment companies as defined in the investment company act of 1940 or insurance companies.

#### **Section 61-1-4. Renewal, Consent to Service, Application, Fee and Bond.**

(1) A broker-dealer, agent, or investment adviser must obtain an initial or renewal registration by filing with the commission an application together with a consent to service of process pursuant to section 61-1-26 (6). The application shall contain whatever information the commission by rule requires concerning such matters as the applicant's form and place of organization; the applicant's proposed method of doing business; the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of any employee; any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and the

applicant's financial condition and history. The commission may by rule or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state. When registration is granted, a certificate shall be issued to every broker-dealer and investment adviser, and a pocket card to every registered individual. Every registration of broker-dealers, agents, and investment advisers shall expire on December 31 of each year. In the absence of any reason or condition which might warrant the refusal to re-register, the commission shall re-register broker-dealers, agents, and investment advisers for each ensuing year upon receipt of the written request and the annual fee therefore as required herein. If a license is not renewed on or before January 31 of each year for which it is to run, the registration shall be placed on the inactive roll. Upon payment of the annual fee for the current year, and a re-instatement fee of \$10.00 in case of broker-dealers and investment advisers, and \$5.00 in case of agents, re-registration shall be granted; provided, however, that registrations not renewed for two successive years shall be dropped from the roll and shall be re-registered as required for new applicants.

(2) Every applicant for initial or renewal registration shall pay a filing fee of \$25.00 in the case of a broker-dealer, \$10.00 in the case of an agent, and \$10.00 in the case of an investment adviser, and \$5.00 for each examination test. If the registration or renewal is not granted or the application is withdrawn, the commission shall retain the fee.

(3) A registered broker-dealer or investment adviser may file an application for registration of a successor for the unexpired portion of the year. There shall be no filing fee.

(4) The commission may by rule prescribe a minimum capital for registered broker-dealers and investment advisers.

(5) The commission shall require registered broker-dealers and investment advisers to post surety bonds and may determine the conditions and the amounts of the bonds up to \$10,000. Every bond shall provide for suit thereon by any person who has a cause of action under section 61-1-22. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

#### **Section 61-1-5. Broker-Dealer and Investment Adviser Books and Records.**

Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commission by rule prescribes. All records so required shall be preserved for three years unless the commission by rule prescribes otherwise for particular types of records.

(2) Every registered broker-dealer shall, within twenty-four hours after demand, furnish to any customer or principal for whom such broker-dealer has executed any order for the purchase or sale of any securities, either for immediate or future delivery, a written statement showing the time when, the place where, and price at which the same were bought and sold.

(3) Every registered broker-dealer and investment adviser shall file such financial reports as the commission by rule prescribes.



(4) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 61-1-3 (2).

(5) All the records referred to in subsection (1) are subject at any time or from time to time to such reasonable periodic special, or other examinations by representatives of the commission, within or without this state, as the commission deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examination, the commission, insofar as it deems practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association under the Securities Exchange Act of 1934.

**Section 61-1-6. Commission May Deny, Suspend, or Revoke Registration and Require Tests.**

(1) The commission may by order deny, suspend, or revoke any registration if it finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser,

(a) has filed an application for registration which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(c) has been convicted, within the past ten years, or any misdemeanor or involving a security or any aspect of the securities business, or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commission denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser;

(f) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a broker-dealer, agent, or investment adviser, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the securities exchange act of 1934, or is the subject of a United States Post Office fraud order; but the commission may not institute a revocation or suspension proceeding under this clause (f) more than one year from the date of the order relied on, and it may not

enter an order under this clause on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commission may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(i) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (3).

(2) The commission may by order deny, suspend, or revoke any registration if it finds that the order is in the public interest and that the applicant or registrant

(a) has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an investment adviser; or

(b) has failed to pay the proper filing fee; but the commission may enter only a denial order under this clause, and shall vacate any such order when the deficiency has been corrected.

The commission may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to it when registration became effective unless the proceeding is instituted within the next thirty days.

(3) The following provisions govern the application of section 61-1-6 (1) (i).

(a) The commission may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer.

(b) The commission may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser.

(c) The commission may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge.

(d) The commission shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(e) The commission shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When it finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, it may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser.

(f) The commission shall by rule provide for an examination, which may be written or oral or both, to be taken by all applicants (except

those currently registered), as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.

(4) If the commission finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commission may by order cancel the registration or application.

(5) Withdrawal from registration as a broker-dealer, agent, or investment adviser becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the commission may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commission by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commission may nevertheless institute a revocation or suspension proceeding under section 61-1-6 (1) (b) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(6) No order may be entered under any part of this section without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent), granting opportunity for hearing, and written findings of fact and conclusions of law.

#### **Section 61-1-7. Registration Before Sale.**

It is unlawful for any person to offer or sell any security in this state unless it is registered under this act or the security or transaction is exempted under section 61-1-14.

#### **Section 61-1-8. Registration by Notification.**

(1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 61-1-9;

(a) any security whose issuer and any predecessors who have been in continuous operation for at least five years if there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends or any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision, and the issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal to at least five percent of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within thirty days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant,

within ninety days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal to at least five percent of the amount (as measured in clause (i) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for non-issuer distribution if any security of the same class has ever been registered under this act or a predecessor act, or the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 61-1-11 (3) and the consent to service of process required by section 61-1-26 (6):

(a) a statement demonstrating eligibility for registration by notification;

(b) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;

(c) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(d) a description of the security being registered;

(e) the information and documents specified in clauses (h), (i), and (j) of section 61-1-10 (2); and

(f) in the case of any registration under section 61-1-8 (1) (b) which does not also satisfy the conditions of section 61-1-8 (1) (a), a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than two years.

(3) If no stop order is in effect and no proceeding is pending under section 61-1-12, a registration statement under this section automatically becomes effective at three o'clock mountain standard time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commission determines.

#### **Section 61-1-9. Registration by Coordination.**

(1) Any security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 61-1-11 (3) and the consent to service of process required by section 61-1-26 (6) :

(a) three copies of the prospectus together with all amendments filed under the securities act of 1933;

(b) if the commission by rule or otherwise, requires a copy of the articles of incorporation and by-laws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered and a specimen or copy of the security;

(c) if the commission requests any other information, or copies of any other documents, filed under the securities act of 1944; and

(d) an undertaking to forward all future amendments to the federal prospectus, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, whichever first occurs.

(3) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (a) no stop order is in effect and no proceeding is pending under section 61-1-12; (b) the registration statement has been on file with the commission for at least ten days; and (c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the commission permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commission by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commission may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if it promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when it notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commission may by rule or otherwise waive either or both of the conditions specified in clauses (b) and (c) of this subsection (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commission of the

date when the federal registration statement is expected to become effective, the commission shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether it then contemplates the institution of proceeding under section 61-1-12, but this advice by the commission does not preclude the institution of such a proceeding at any time.

**Section 61-1-10. Registration by Qualification.**

(1) Application may be made to register any security by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 61-1-11 (3) and the consent to service of process required by section 61-1-26 (6):

(a) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

(b) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(c) with respect to persons covered by clause (b): the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(d) with respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (b) other than his occupation;

(e) with respect to every promoter if the issuer was organized within the past three years: the information specified in clause (b), any amount paid to him within that period or intended to be paid by him, and the consideration for any such payment;

(f) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;

(g) the capitalization and long-term debt (on both a current

and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(h) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(i) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(j) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such option held to be held by every person required to be named in clause (b), (d), (e), (f), or (h) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(k) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceed-

ing to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(l) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(m) a specimen copy of the security being registered; a copy of the issuer's articles of incorporation, and by-laws, if any, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(n) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and non-assessable, and, if a debt security, a binding obligation of the issuer;

(o) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(p) a balance sheet of the issuer as of the date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(q) such additional information or verification of any statement as the commission requires by rule or order.

(3) A registration statement under this section becomes effective when the commission so orders.

(4) The commission shall require as a condition of registration under this section that a prospectus containing the information (but not containing copies of contracts or agreements) specified in clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (p) of section 61-1-10 (2) to be sent or given to each person to whom an offer is made before or concurrently with the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, the confirmation of any sale made by or for the account of any such person, payment pursuant to any such sale, or delivery of the security pursuant to any such sale, whichever first occurs.

#### **Section 61-1-11. Registration Fees, Registration Statement, Escrow**

(1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(2) Every person filing a registration statement shall pay a filing



fee of \$25.00. If the registration is granted, the applicant shall pay a fee of \$1.00 per \$1,000 of the aggregate offering price of the securities to be sold in this state, but in no case shall such fee be less than \$25 nor more than \$200. The filing fee will be applied toward the registration fee.

(3) Every registration statement shall specify the amount of securities to be offered in this state; the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

(4) Any document filed under this act or a predecessor act (within five years preceeding the filing of a registration statement) may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(5) The commission may by rule or otherwise permit the omission of any item of information or document from any registration statement or prospectus.

(6) In the case of a non-issuer distribution, information may not be required under section 61-1-10 or 61-1-11 (9) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(7) The commission may by rule or order require as a condition of registration by qualification or coordination that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commission may by rule or order determine the conditions of any escrow or impounding required hereunder, but it may not reject a depository solely because of location in another state.

(8) Every registration statement is effective for one year from its effective date. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction so long as the registration statement is effective and between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 61-1-12 (if the registration statement did not relate in whole or in part to a non-issuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commission.

(9) So long as a registration statement is effective and the offering is not completely sold, the commission may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information con-

tained in the registration statement and to disclose the progress of the offering.

(10) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the investment company act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the commission so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection (2), with respect to the additional securities proposed to be offered.

**Section 61-1-12. Commission May Issue Stop Order.**

(1) The commission may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if it finds that the order is in the public interest and that

(a) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 61-1-11 (10) as of its effective date, or any report under section 61-1-11 (9) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of this act or any rule, order, or condition lawfully imposed under this act has been wilfully violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(c) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the commission may not institute a proceeding against an effective registration statement under clause (c) more than one year from the date of the order or injunction relied on, and (ii) it may not enter an order under clause (c) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(d) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(g) when a security is sought to be registered by notification, it is not eligible for such registration;

(h) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 61-1-9 (2) (d); or

(i) the applicant or registrant has failed to pay the proper filing fee; but the commission may enter only a denial order under this clause and it shall vacate any such order when the deficiency has been corrected.

The commission may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to it when the registration statement became effective unless the proceeding is instituted within the next thirty days.

(2) The commission may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the commission shall promptly notify each person specified in subsection (3) that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commission, the order will remain in effect until it is modified or vacated by the commission. If a hearing is requested or ordered, the commission, after notice of and opportunity for hearing to each person specified in subsection (3), may modify or vacate the order or extend it until final determination.

(3) No stop order may be entered under any part of this section except the first sentence of subsection (2) without (a) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered, (b) opportunity for hearing, and (c) written findings of fact and conclusions of law.

(4) The commission may vacate or modify a stop order if it finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

#### **Section 61-1-13. Definitions.**

As used in this act:

(1) the word "commission" means the Utah securities commission charged with administration of this act is designated in section 61-1-18 (1).

(2) the word "agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in effecting transactions in a security exempted by clause (a), (b), (c), (i) or (j) of section 61-1-14 (1), effecting transactions exempted by section 61-1-14 (2), or effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within the definition herein stated.

(3) the word "broker-dealer" means any person engaged in the

business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include an agent, an issuer, a bank, savings institution, or trust company or a person who has no place of business in this state if (a) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (b) during any period of twelve consecutive months he does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in clause (a), whether or not the offeror or any of the offerees is then present in this state.

(4) the words "fraud," "deceit," and "defraud" are not limited to common-law deceit.

(5) the word "guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(6) the words "investment adviser" mean any person who, for compensation, engages in the business of advising others, either directly or through publication or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or publications analyses or reports concerning securities.

The words "investment adviser" do not include (a) a bank, savings institution, or trust company; (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (c) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (d) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (e) a person whose advice, analyses, or reports relate only to securities exempted by section 61-1-14 (1) (a); (f) a person who has no place of business in this state if (i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months he does not direct business communications into this state in any manner to more than five clients other than those specified in clause (i), whether or not he or any of the persons to whom the communications are directed is then present in this state; or (g) such other persons not within the intent of this paragraph as the commission may by rule or order designate.

(7) the word "issuer" means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the

term "issuer" means the person or persons performing the acts and assuming duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (b) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer."

(8) the word "non-issuer" means not directly or indirectly for the benefit of the issuer.

(9) the word "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) (a) the words "sale" or "sell" include every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(b) the words "offer" or "offer to sell" include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(d) A purported gift of assessable stock is considered to involve an offer and sale.

(e) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(f) The terms defined in this subsection do not include (i) any bona fide pledge or loan; (ii) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (iii) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (iv) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(11) the terms "securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," and "investment company act of 1940" mean the federal statutes of those names as amended before or after the effective date of this act.

(12) the word "security" means any note; stock; treasury stock; bond; debenture; evidence or indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; in-

vestment contract, burial certificate or burial contract; voting-trust certificate; certificate of deposit for a security; certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The word "security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a lump sum or periodically for life or some other specified period.

(13) the word "state" means any state, territory or possession of the United States, the District of Columbia, and Puerto Rico.

#### **Section 61-1-14. Exemptions.**

(1) The following securities are exempted from section 61-1-7 and 61-1-15:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(b) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(d) any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(e) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(f) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is subject to the jurisdiction of the interstate commerce commission; a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; regulated in respect of its rates or in its issuance by a governmental authority of the United States, any state, Canada, or any Canadian province;

(g) any security listed on the New York Stock Exchange, the American Stock Exchange, or on any other recognized and responsible stock exchange approved by the commission, provided that the commission may at any time suspend or revoke this exemption for any particular stock exchange, security or securities pursuant to section 61-1-14 (3);

any other security of the same issuer which is of senior or substantially equal rank to any security so listed and approved by the commission; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(h) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association; and any security issued by a corporation organized under Chapter 1 of Title 3, Utah Code Annotated 1953, and any security issued by a corporation to which the provisions of such chapter are made applicable by compliance with the requirements of Section 3-1-21 thereof.

(i) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(j) any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan if the commission is notified in writing thirty days before the inception of the plan, or with respect to plans which are in effect on the effective date of this act, within sixty days thereafter (or within thirty days before they are reopened if they are closed on the effective date of the act);

(2) The following transactions are exempted from sections 61-1-7 and 61-1-15:

(a) any isolated transaction, whether effected through a broker-dealer or not;

(b) any non-issuer distribution of an outstanding security if (i) it is listed in a recognized securities manual such as Moody's, Standard & Poor's and Fitch's securities manuals which contain the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(c) any non-issuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy;

(d) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(e) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(f) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(g) any transaction executed by a bona fide pledgee without any purpose of evading this act;

(h) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(i) any offer or sale of a preorganization certificate or subscription if (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (ii) the number of subscribers acquiring any legal or beneficial interest therein does not exceed ten;

(j) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or the issuer first files a notice specifying the terms of the offer and the commission does not by order disallow the exemption within the next five full business days;

(k) any offer (but not a sale) of a security for which registration statements have been filed under both this act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(3) The commission may by order deny or revoke any exemption specified in clause (h) or (j) of subsection (1) or in subsection (2) with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity or hearing, and written findings of fact and conclusions of law, except that the commission may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the commission shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commission, the order will remain in effect until it is modified or vacated by the commission. If a hearing is requested or ordered, the commission, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 61-1-7 or 61-1-15 by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(4) In any proceeding under this act, the burden of proving an



exemption or an exception from a definition is upon the person claiming it.

**Section 61-1-15. Commission May Require Sales Literature.**

The Commission may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by section 61-1-14.

**Section 61-1-16. False Statements Unlawful.**

It is unlawful for any person to make or cause to be made, in any document filed with the Commission or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

**Section 61-1-17. Commission Has No Responsibility as to Merits.**

(1) Neither the fact that an application for registration or a registration statement has been filed nor the fact that a person or security is effectively registered constitutes a finding by the Commission that any document filed under this act is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commission has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(2) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (1).

**Section 61-1-18. Commission Personnel, Annual Report, Disposition of Fees.**

(1) This act shall be administered by the state securities commission which shall consist of the three members of the commission of business regulation. The commission shall appoint one of its members to be the chairman; any two members of the commission shall constitute a quorum. The commission shall hold weekly meetings on such dates as it may fix, and may hold special meetings upon the call of the chairman. It shall keep a complete record of the business it transacts, and shall prepare all blanks necessary in the conduct of its business. With the approval of the governor it may employ a director, and such other assistants as may be necessary at salaries to be fixed by it according to standards established by the department of finance. The director shall qualify by taking the constitutional oath of office and by giving bond to the state in such form and in such amount as shall be determined by the department of finance, conditioned for the faithful performance of his duties. The director shall hold office during the pleasure of the commission.

(2) On or before the 1st day of October of each year the commission shall file in the office of the governor a report containing an accurate statement of its work for the preceding fiscal year ending

June 30, which report shall contain a schedule of all securities, issuers, broker-dealers, agents and investment advisers registered, or as to which registration is pending or has been revoked, denied, enjoined or suspended. The report shall further contain a statement of the receipts and disbursements of the commission, and such other facts as may be necessary to a complete understanding of its work. All fees charged and collected under this act shall be paid by the director at least once a month accompanied by a detailed statement thereof into the treasury of the state to the credit of a fund to be known as the "securities commission fund" which fund is hereby created. All monies so paid to the treasury and credited to said fund are hereby appropriated to the use of the commission in carrying out all the provisions of this act, including the paying of salaries, and all other necessary expenses. All monies in excess of \$15,000.00 remaining to the credit of the "securities commission fund" at noon on the first day of July of each biennium next following the regular session of the legislature shall, on or before the 31st day of July of each biennium be transferred from said fund to the general fund of the state.

(3) It is unlawful for the Commission or any of its officers or employees to use for personal benefit any information which is filed with or obtained by the commission and which is not made public. No provision of this act authorizes the commission or any of its officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this act. No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under subpoena directed to the commission or any of its officers or employees.

(4) Every person applying to the commission for registration shall agree to advance funds sufficient to guarantee the expenses of any examination which may be connected therewith. A person making any such examination on behalf of the commission shall render a detailed statement of his expenses in duplicate, one copy of which shall be filed with the state board of examiners and the other copy with the person examined. Any excess, after travel, hotel, and other necessary expenses and fees or fixed charges of examination are deducted, shall be returned to the person examined.

(5) The commission may charge and collect the following fees in addition to any elsewhere provided for in this chapter:

(a) For any examination, audit, or investigation, not to exceed \$50.00 per day or fraction thereof.

(b) For certificate of serving and mailing process served upon the commission in any action or proceeding commenced or prosecuted in this state against any person who shall have appointed the commission or the director of the commission its agent as provided in section 61-1-26 (6), \$2.50.

(c) For all papers and other records available to the public, the commission shall establish a reasonable fee for copies and authentications and may fix a reasonable charge for any other data or publications issued under its authority.

**Section 61-1-19. Commission May Make Investigation.**

(1) The commission in its discretion may make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, may require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this act or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this act, the commission or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commission deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the appropriate district court, upon application by the Commission, may issue to the person an order requiring him to appear before the commission, or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commission, or in obedience to the subpoena of the commission or any officer designated by it, or in any proceeding instituted by the commission, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

**Section 61-1-20. Commission May Bring Action in Court.**

Whenever it appears to the commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion bring an action in the appropriate district court to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commission to post a bond.

**Section 61-1-21. Penalties for Violation.**

(1) Any person who wilfully violates any provision of this act except section 61-1-16, or who wilfully violates any rule or order under this act, or who wilfully violates section 61-1-16 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than \$5,000 or imprisoned not more than three years, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned or complaint filed under this act more than five years after the alleged violation.

(2) The attorney general shall advise the commission and its staff in matters requiring legal counsel or services in the exercise of the commission's power or performance of its duties. In the prosecution or defense of any action in connection therewith, the attorney general, or the county or district attorney of the appropriate jurisdiction, shall perform all necessary legal services without compensation other than their regular salaries.

**Section 61-1-22. Sales in Violation, Remedies.**

Any person who

(a) offers or sells a security in violation of section 61-1-3 (1), 61-1-7, or 61-1-17 (2) or of any rule or order under section 61-1-15 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 61-1-10 (4), 61-1-11 (7), or

(b) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six per cent per year from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six per cent per year from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the dealer, unless the non-seller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the

several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment.

(4) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(5) No person may sue under this section more than two years after the contract of sale. No person may sue under this section (i) if the buyer reviewed a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six percent per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty days of its receipt, or (ii) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(6) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(7) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void.

(8) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist at law or in equity, but this act does not create any cause of action not specified in this section or section 61-1-4 (5).

#### **Section 61-1-23. Review by Courts.**

(1) Any person aggrieved by a final order of the commission may obtain a review of the order in the appropriate district court by filing in said court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the Commission, and thereupon the commission shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commission as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the commission, the court may order the additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The commission may modify its findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order. (The judgment of the court is final, subject to review by the supreme court.)

(2) The commencement of proceedings upon subsection (1) does

not, unless specifically ordered by the court, operate as a stay of the commission's order.

**Section 61-1-24. Commission May Make Rules and Forms.**

(1) The commission may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this act, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the provisions of this act. For the purpose of rules and forms, the commission may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

(2) No rule, form, or order may be made, amended, or rescinded unless the commission finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the commission may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(3) The commission may by rule or order prescribe the form and content of financial statements required under this act, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(4) All rules and forms of the commission shall be published.

(5) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commission, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(6) Every hearing in an administrative proceeding shall be public unless the commission in its discretion grants a request joined in by all the respondents that the hearing be conducted privately.

**Section 61-1-25. Record of Registrations.**

(1) A document is filed when it is received by the commission.

(2) The commission shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which may have been entered under this act. The register shall be open for public inspection.

(3) The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commission prescribes.

(4) Upon request and at such reasonable charges as it prescribes, the commission shall furnish to any person photostatic or other copies (certified under seal if requested) of any entry in the register or any

document which is a matter of public record. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(5) The commission in its discretion may honor requests from interested persons for interpretative opinions.

**Section 61-1-26. Sales in Utah, Irrevocable—Consent to Service.**

(1) Sections 61-1-1, 61-1-3 (1), 61-1-7, 61-1-17 and 61-1-22 apply to persons who sell or offer to sell when an offer to sell is made in this state, or an offer to buy is made and accepted in this state.

(2) Sections 61-1-1, 61-1-3 (1), and 61-1-17 apply to persons who buy or offer to buy when an offer to buy is made in this state, or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy is made in this state, when the offer is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer.)

(4) An offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months, or a radio or television program originating outside this state is received in this state.

(5) Section 61-1-2 and 61-1-3 (3), as well as section 61-1-17 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(6) Every application for registration under this act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commission, in such form as it by rule prescribes, an irrevocable consent appointing the commission or the director to be his attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against him or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commission, but it is not effective unless the plaintiff, who may be the commission in a suit, action, or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commission, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(7) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and he has not filed a consent to service of process under subsection (6) and personal jurisdiction over him can-

not otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commission or the director to be his attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against him or his successor, executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commission, but it is not effective unless the plaintiff, who may be the commission in a suit, action, or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(8) When process is served under this section, the court, or the commission in a proceeding before it or the director, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

#### **Section 61-1-27. Effectuate Uniformity.**

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this act with the related federal regulation.

#### **Section 61-1-28. Utah Uniform Securities Act.**

This act may be cited as the Utah Uniform Securities Act.

#### **Section 61-1-29. Savings Clause.**

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

#### **Section 61-1-30. Prior Law Repealed, Savings Clause.**

(1) The Securities Act, Chapter 1, Title 61, Utah Code Annotated 1953, as amended by Chapter 129, Laws of Utah 1957, is hereby repealed except as saved in this section.

(2) Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after the effective date of this act.

(3) All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this act had not been passed. They are considered to have



been filed, entered, or imposed under this act, but are governed by prior law.

(4) Prior law applies in respect of any offer or sale made within one year after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

(5) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this act are governed by section 61-1-23, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the effective date of this act.

Approved March 21, 1963.

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## CHAPTER 146

H. B. No. 124.

(Passed March 14, 1963. In effect May 14, 1963.)

### REAL ESTATE BROKER

**An Act Relating to Real Estate Brokers, Providing That the Securities Commission May Issue Cease and Desist Orders and Seek Injunctive Relief for Violations of the Chapter; and Amending Sections 61-2-2, 61-2-5, 61-2-9, and 61-2-11, 61-2-19, Utah Code Annotated 1953, Relating to the Duties of Real Estate Brokers and Providing That Business Opportunities Shall Be Included in the Definition of Real Estate; Increasing Compensation of Board of Real Estate Examiners; Providing for Certain Changes in Fees; Providing that Brokers May Share Commissions With Licensed Brokers in Other Jurisdictions; and Adding Sections 61-2-21 and 61-2-22 to Prescribe Course of Action in Case of Violations and Savings Clause.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Sections Amended.**

Sections 61-2-2, 61-2-5, 61-2-6, 61-2-9 and 61-2-11, 61-2-19, Utah Code Annotated 1953, are amended to read:

#### **61-2-2. "Real Estate Broker"—"Real Estate" Defined.**

The term "real estate broker" within the meaning of this chapter shall include all persons, partnerships, associations and corporations, foreign and domestic, who for another and for a fee, commission or other valuable consideration, or who with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission or other valuable consideration, sells, exchanges, purchases, rents or leases or negotiates the sale, exchange, purchase, rental or leasing of, or offers or attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of, or lists or offers or attempts or agrees to list, or auctions, or offers or attempts or agrees to collect rental for the use of real estate or who advertises, who buys or offers to buy, sells

or offers to sell or otherwise deals in options on real estate or the improvements thereon or who collects or offers or attempts or agrees to collect rental for the use of real estate or who advertises or holds himself, itself or themselves out as engaged in the business of selling, exchanging, purchasing, renting or leasing real estate, or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is calculated to result in the sale, exchange, leasing or renting of any real estate. The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary or upon a commission or upon a salary and commission basis or otherwise to sell such real estate or any parts thereof in lots or other parcels and who shall sell or exchange or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate.

The provisions of this chapter shall not apply to any person, partnership, association or corporation who as owner or lessor shall perform any of the acts aforementioned with reference to property owned or leased by such person, partnership, association or corporation nor to isolated transactions by persons holding a duly executed power of attorney from the owner nor shall this chapter be construed to include in any way the services rendered by an attorney at law in performing his duties as such attorney at law nor shall it apply to a receiver, trustee, in bankruptcy, administrator, or executor, or any person acting under order of any court nor to a trustee under a deed of trust of a will nor to their employees.

The term "real estate" as used in this chapter shall include leaseholds and business opportunities.

The term "business opportunity" as used in this Chapter shall mean and include an existing business, business and the good will attached thereto or any one or combination thereof.

#### **61-2-5. Securities Commission—Board of Real Estate Examiners.**

(a) It shall be the duty of the State securities commission, herein referred to as the commission, to administer and provide for the enforcement of all provisions of this chapter. A board of real estate examiners, herein referred to as the board, and the office of real estate director, herein referred to as the director, are hereby established under the appointment, direction and supervision of the securities commission. The commission shall appoint a board of three real estate examiners, each of whom shall, for at least five years prior to the date of his appointment, have been engaged in the real estate business, and shall have been a licensed real estate broker in the State of Utah for three years next prior to his appointment. Not more than one member of the board shall be appointed from any one county in the state. The board members shall be appointed for terms of one year, two years and three years, upon creation of the board, and upon expiration of the respective terms, new appointments shall be made for terms of three years. The board of real estate examiners shall, upon its own motion or upon the verified complaint in writing of any person, cause to be made an investigation of the conduct of any licensee mentioned in the

complaint, and shall make a full report and recommendation to the securities commission which then shall act as required under the provisions of this chapter.

(b) The commission is vested with the power and authority to make and enforce such rules and regulations connected with the application for any broker or salesman' license, and the revocation or suspension thereof as shall be deemed necessary to administer and enforce the provisions of this chapter.

(c) The board of real estate examiners shall meet in July, 1951 and semi-annually thereafter, for not to exceed five days per meeting except as otherwise specifically directed by the securities commission, and shall revise, if necessary, and bring to date the questions contained in the examination for broker and salesman's license, and shall make such recommendations to the commission for the conduct of the department, and the director as may be deemed advisable. Additional meetings shall be held at the call of the commission as required. The members of the board shall select a chairman and two of the members shall constitute a quorum for the transaction of business.

(d) Each member of the board shall receive as full compensation for each day or portion thereof actually spent on the work of said board the sum of \$15.00 per day, and his actual and necessary expenses incurred in the performance of his duties pertaining to this office.

(e) The director shall serve at the pleasure of the commission and the board. The duties of the director shall include:

1. Supervising applications, licenses, and preparations for examinations as directed by the board:

2. Examining records of every licensed real estate broker in the state of Utah annually, or as frequently as shall be directed by the board:

3. Other duties as designated by the commission or the board.

The commission shall fix the salary of the director and determine how much of his time shall be devoted to his work as director, and shall employ such other persons as shall be necessary to carry out the duties imposed by this act.

#### **61-2-6. Board of Real Estate Examiners.**

(a) It shall be the duty and responsibility of the board of real estate examiners to determine the qualification and requirements and to prescribe the type and content of the examinations to be passed by every applicant for a real estate broker's or salesman's license. With due regard for the paramount interest of the public, the board of real estate examiners may require and pass upon such proof as may be deemed necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant; and shall require the applicant to pass an examination, and prescribe the passing grade, covering the fundamentals of the English language, arithmetic, book-keeping, real estate principles and practices, including the elements of land economics, real estate law, acquisition of titles, deeds, leases, mortgages, land contracts, agency contracts, liens, zoning, taxation, and the provisions of this chapter. Three years' full time experience as a real estate salesman or its equivalent shall be necessary before any applicant may apply for, and secure a broker's license in the state of

Utah. The commission or the board shall, however, establish by regulation and accept, experience or special education in similar fields of business in lieu of the three years' experience.

(b) All applications for license shall be made in writing to the commission. Every application for a broker's license shall be accompanied by a bond in the sum of \$1,000 running to the state of Utah, for the benefit of any person for whom the broker shall act, executed by two good and sufficient sureties, to be approved by the commission, or by a surety company duly authorized to do business in this state, said bond to be in form approved by the commission and conditioned that the applicant shall conduct his business in accordance with the requirements of this chapter. Every applicant for a license shall furnish a sworn statement setting forth his present address, both business and residence, the names of all places where he formerly resided, or was engaged in business, or acted as real estate salesman, for a period of sixty days or more during the preceding five years, and the length of such residence, together with the name of at least one real estate owner in each of the counties where he may have resided, engaged in business or acted as a salesman. Every application for a broker's license shall also state the name of the applicant and the location of the places for which such license is desired, and shall set forth the period of time, if any, which the applicant has been engaged in business. Every real estate broker shall be a resident of, and maintain a place of business in, this state, except as hereinafter provided. Such application shall be accompanied by the recommendation of at least three citizens who have been for three years and now are real property owners who have known the applicant for three years, and are not related to the applicant, certifying that the applicant bears a good reputation for honesty and trustworthiness, and recommending that a license be granted to the applicant. In case a real estate broker maintains more than one place of business within this state, a duplicate license shall be issued to him for each office so maintained. Each duplicate license shall be issued for a fee of \$1.00. Every applicant for salesman's license shall, in addition to the above requirements, set forth the period of time, if any, during which he has been engaged in the business, stating the name of his last employer, and the name and the place of business of the person then employing him or with whom he is to be connected.

(c) A nonresident of this state may become a real estate broker by conforming to all the provisions of this act, except that such non resident broker regularly engaged in the real estate business as a vocation, and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, shall not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker by another state as satisfactorily qualifying him for license as a broker, provided that said nonresident broker has qualified for license in his own state by written examination and also that said other state permits licenses to be issued to licensed brokers in this state, without examination. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in

which a cause of action may arise, in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on any member of the commission, said consent stipulating and agreeing that such service of such process or pleading shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. Said consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by the seal of such corporation. Any service of process or pleading shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the last known main office of the applicant against whom said process or pleading is directed, and no default in any such proceedings or action shall be taken except upon affidavit certification of the commission, that a copy of said process or pleading was mailed to the defendant as herein required, and no judgment by default shall be taken in any such action or proceedings until after twenty days from the date of mailing of such process of pleading to the nonresident defendant.

**61-2-9. Fees—Expiration, Renewal and Revocation—Licenses of Firm Partnership or Association.**

(a) A fee of \$10.00 shall accompany the application to take a real estate broker's examination, and a fee of \$5.00 shall accompany the application to take a real estate salesman's examination. The examination fee shall be retained regardless of whether or not the applicant passes said examination. The first annual fee of such real estate broker's license shall be \$25.00 and the renewal fee shall be \$15.00. The first annual fee for each real estate salesman's license shall be \$5.00 and the renewal shall be \$3.00. Each real estate broker's license which may be granted to an individual shall entitle such individual to perform all of the acts contemplated by this chapter without any further application upon his part and without payment of any further fee other than the real estate broker's annual fee.

(b) Every application for a license under the provisions of this chapter shall be accompanied by the license fee herein prescribed and every license shall expire on the 31st day of December of each year. In the absence of any reason or condition which might warrant the refusal of the granting of a license, the commission shall issue a new license for each ensuing year upon receipt of the written request of the applicant and the prescribed fee therefor as required herein. If a license is not renewed on or before January 31st of each year for which it is to run, the licensee shall be placed upon an inactive roll. Upon payment of the prescribed fee for the current year and a reinstatement fee of \$10.00 the license shall be renewed without examination; provided, however, that a person not renewing his license for two successive years shall be dropped from the roll and shall be relicensed only as prescribed herein for an original application. The revocation of a broker's license shall automatically suspend every real estate salesman's license granted to any person by virtue of his connection with the broker whose license has been revoked, pending a change of broker connections and the issuance of a new license. Such a license shall be issued without charge

if granted during the same year in which the original license was granted.

(c) Each real estate broker's license granted to any firm, partnership or association consisting of more than one person, or to a corporation, shall entitle such real estate broker to designate one of its officers or members, who upon compliance with the terms of this chapter shall, without the payment of any further fee, upon issuance of said broker's license, be entitled to perform all of the acts of a real estate salesman contemplated by this chapter. The person so designated, however, must make application for a salesman's license, accompanying the application of the real estate broker. If in any case the person so designated by a real estate broker shall be refused a license by the commission, or in case such person ceases to be connected with such real estate broker, the broker shall have the right to designate another person, who shall make application as in the first instance.

(d) The commission may also charge and collect the following fees: \$1.00 for issuance of a new license because of change of name of broker; \$1.00 for certifications; for certified copies of official documents, orders, other papers and transcripts, 20c for each folio; \$1.00 for change of salesman from one broker to another.

#### **61-2-11. Revocation or Suspension of License—Grounds.**

The board or the commission may upon its own motion, and shall upon the verified complaint in writing of any person, investigate or cause to be investigated the actions of any real estate broker or real estate salesman, or any person who shall assume to act as such, within this state, and may suspend or revoke any license issued under the provisions of this chapter at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee in performing or attempting to perform any of the acts mentioned in this chapter is found to be guilty of:

- (1) Making any substantial misrepresentation; or,
- (2) Making any false promises of a character likely to influence, persuade, or induce; or,
- (3) Pursuing a continued and flagrant course of misrepresentation, or of making false promises through agents or salesmen or advertising or otherwise; or,
- (4) Acting for more than one party in a transaction without the knowledge of the other party thereto; or,
- (5) Representing or attempting to represent a real estate broker other than the employer without the knowledge and consent of the employer, or representing as salesman, employee, or having a contractual relationship similar to that of salesman or employee with other than a licensed real estate broker; or,
- (6) Failing, within a reasonable time, to account for or to remit any moneys coming into his possession as broker, which belong to others; or co-mingling such funds with his own or with funds not held for others in the same capacity; or,
- (7) Paying a commission or valuable consideration to any person not licensed under the provision of this chapter provided, a commission

may be shared with a licensed real estate broker of another jurisdiction;  
or,

(8) Being unworthy or incompetent to act as a real estate broker or salesman in such manner as to safeguard the interests of the public;  
or,

(9) Failing to furnish voluntarily copies of all listings and agreement of sale contracts to all parties executing the same; or,

(10) Failing to keep a record of all transactions made which shall show the names of buyers and sellers, identification of the property, sale price, trust funds received, how trust funds are held and whether used by the broker, amount of commission and to whom paid and in what amounts, and which records shall include all agreements or instructions from buyers or seller. All such records shall be retained for a period of three years and shall be open to inspection during business hours to the director or other duly designated representative of the board or the commission; or,

(11) Failing to disclose, in the purchase of property in the name of a broker or salesman, whether the purchase is made for himself or itself or for an undisclosed principal.

(12) Any other conduct whether of a similar or of a different character from that hereinbefore specified which constitutes dishonest dealing.

#### **61-2-19. Disposition of Fees Collected.**

On or before the 1st day of October of each year the commission shall file in the office of the governor a report containing an accurate statement of its work for the preceding fiscal year ending June 30, which report shall contain a schedule of all real estate brokers and salesmen licensed, or as to which license is pending or has been revoked, denied, enjoined or suspended. The report shall further contain a statement of the receipts and disbursements of the commission, and such other facts as may be necessary to a complete understanding of its work. All fees charged and collected under this act shall be paid by the director at least once a month, accompanied by a detailed statement, thereof, into the treasury of the state to the credit of a fund to be known as the "real estate license fund" which fund is hereby created. All moneys so paid to the treasury and credited to said fund are hereby appropriated to the use of the commission in carrying out all the provisions of this act, including the paying of salaries and all other necessary expenses. All moneys in excess of \$5,000.00 remaining to the credit of the "real estate license fund" at noon on the first day of July of each year shall, on or before the 31st day of July of said year be transferred from said fund to the general fund of the state.

#### **Section 2. Section Enacted.**

Sections 61-2-21 and 61-2-22, Utah Code Annotated 1953, are enacted to read:

#### **61-2-21. Violation—Hearings—Remedies.**

(a) Whenever the commission shall have reason to believe that any person, partnership or corporation has been or is engaging in acts constituting violations of this chapter, and it shall appear to the commission

that it would be in the public interest to stop such acts, it shall issue and serve upon the person, partnership or corporation an order directing such person, partnership or corporation to cease and desist from such acts. The person, partnership or corporation upon which the order is served may within ten days after receiving such an order, request that a hearing be had before the commission; provided, however, that pending such hearing the cease and desist order shall remain in effect. If such request is made, the commission shall serve upon such person, partnership or corporation a complaint stating its charges and a notice specifying the day and place of hearing which shall be at least ten days after the service of said complaint and notice.

(b) If after such hearing the commission shall be of the opinion that the act or acts of the person, partnership or corporation are in violation of the provisions of this chapter, and if no hearing is requested and if the person, partnership or corporation shall fail to cease the act or acts thereof, or after discontinuing such act or acts, shall again commence such act or acts, the commission shall cause a suit to be commenced in the district court, in its name as the securities commission of the State of Utah, within the county wherein the act or acts of violation occurred or where such person, partnership or corporation resides or carries on business, to enjoin and restrain such person, partnership or corporation from violating the provisions of this chapter. The district courts of this state shall have jurisdiction of such suits.

(c) The remedies and action provided in this section shall in no way interfere with or prevent the prosecution of any other remedies or actions including criminal proceedings.

#### **61-2-22. Savings Clause.**

If any provision of this chapter, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved March 22, 1963.

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## **SOIL CONSERVATION**

### **CHAPTER 147**

H. B. No. 24

(Passed February 13, 1963. In effect May 14, 1963)

#### **WATER AND SOIL CONSERVATION**

**An Act Amending Sections 62-1-2 and 62-1-8, Utah Code Annotated 1953, Relating to Soil Conservation Districts, Declaring It to Be the Policy That Conservation of Soil Resources, Prevention of Soil Erosion and Conservation of Water Are Necessities and Providing for the General Powers of Such Districts.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Sections Amended.**

Sections 62-1-2 and 62-1-8, Utah Code Annotated 1953, are amended to read:



**62-1-2. Policy of Act—Conserving Soil Resources and Preventing Soil Erosion Declared a Necessity.**

It is declared, as a matter of legislative determination—(a) That the farm and grazing lands of the state of Utah are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion, that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

(b) That the consequence of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams and ditches; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor sub-soil material, sand and gravel swept out of the hills, deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies period of drought, and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings and other property from floods and from dust storms; and losses in hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

(c) That to conserve soil and water resource and control and prevent soil erosion and prevent floodwater and sediment damage and the conservation, development, utilization and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, development, utilization and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, checkdams, desilting

basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of wasted, sloping, abandoned or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) It is declared to be the policy of the legislature to provide for the conservation of the soil, water, and soil and water resources of this state, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

#### **62-1-8. Districts Are Bodies Politic—General Powers.**

A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act.

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and floodwater and sediment damages; to the conservation, development, utilization and disposal of water; and the preventive and control measures and works of improvement needed; to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies.

(2) To conduct projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering or having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention and the conservation, development, utilization and disposal of water may be carried out.

(3) To carry out soil erosion preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures list-

ed in subsection (c) of section 62-1-2, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands.

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act.

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interest therein; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this act.

(6) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion and for flood prevention and the conservation, development, utilization and disposal of water.

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act.

(8) To develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion and for flood prevention and the conservation, development, utilization and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of land within the district.

(9) Upon request of the appropriate governmental agency to take over, by purchase, lease or otherwise, and to administer, any soil or water conservation, flood-prevention, erosion-control, or erosion-prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil or water conservation, flood-prevention, erosion-control, or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state, or any of

its agencies, in connection with the acquisition, construction, operation or administration of any soil or water conservation, flood-prevention, erosion-control, or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts and contributions in money, services, materials or otherwise, from the United States or any of its agencies, or from the State or any of its agencies, and to use or expend such moneys, services, materials or other contributions in carrying on its operations.

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to borrow money from the United States government, or other lending agencies and organizations; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this act, to carry into effect its purposes and powers.

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state, or any of its agencies, the supervisors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damage thereon.

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

(13) All construction for retention or impoundment of water and all uses of water under this act must be done in accordance with Title 73 Utah Code Annotated, 1953, as amended.

Approved February 13, 1963.

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## STATE AFFAIRS IN GENERAL

### CHAPTER 148

S. B. No. 48.

(Passed March 14, 1963. In effect July 1, 1963.)

### FINANCE LAW

**An Act Amending Sections 63-2-1, 63-2-2, 63-2-3, 63-2-4, 63-2-7, 63-2-12, 63-2-13, 63-2-14, 63-2-15, 63-2-16, 63-2-17, 63-2-18, 63-2-19, 63-2-20, 63-2-21, 63-2-22, 63-2-23, 63-2-24, 63-2-25, 63-2-26, 63-2-27, 63-2-28, 63-2-29, 63-2-30, 63-2-31, 63-2-32, 63-2-33, 63-2-34, 63-2-35, 63-2-36, 63-2-42, 63-2-44, and 63-2-45, Utah Code Annotated 1953, and 63-2-38, Utah Code Annotated 1953, as Amended by Chapter 150, Laws of Utah, Relating to State Finance Administration and Control; Providing for the Creation of the Office of Director of Finance Under the Governor, and Repealing Sections 63-2-5, 63-2-6, 63-2-8, 63-2-9, 63-2-10, and 63-2-11, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Sections 63-2-1, 63-2-2, 63-2-3, 63-2-4, 63-2-7, 63-2-12, 63-2-13, 63-2-14, 63-2-15, 63-2-16, 63-2-17, 63-2-18, 63-2-19, 63-2-20, 63-2-21, 63-2-22, 63-2-23, 63-2-24, 63-2-25, 63-2-26, 63-2-27, 63-2-28, 63-2-29, 63-2-30, 63-2-31, 63-2-32, 63-2-33, 63-2-34, 63-2-35, 63-2-36, 63-2-42, 63-2-44, and 63-2-45, Utah Code Annotated 1953, and 63-2-38, Utah Code Annotated 1953, as amended by Chapter 150, Laws of Utah 1961, are amended to read:

**63-2-1. Department of Finance Created.**

There is created a department to be known as the department of finance attached to the office of the governor to assist the governor in the execution of his constitutional duties as the state's chief executive officer and which shall perform such duties and functions as may be prescribed by law. In construing the authorities and duties imposed by this act, it is the intent of the legislature to define budgetary functions relating to the approval and allocation of funds, budgetary control of funds, prescribing personnel qualifications and salary schedules, approval of proposed expenditures for the purchase of supplies and services; and prescribing other budgetary functions under the constitutional authority of the state's chief executive to transact all executive business for the state, as differentiated from the examination of claims as may be exercised by the board of examiners.

**63-2-2. Director of Finance—Duties—Appointment.**

The administration of the department shall be under the supervision, direction and control of a director who shall be known as the director of finance. The director of finance shall be the state's chief fiscal officer; and ex officio, the state's budget officer, the state's personnel officer, the state's purchasing agent, and the state's accounting officer. The director of finance shall be appointed by the governor by and with the consent of the senate and shall serve at the will and pleasure of the governor. The director of finance shall qualify by taking the constitutional oath of office and shall receive an annual salary to be determined by the governor payable monthly or semi-monthly and in addition thereto, he may be allowed actual traveling and other expenses necessarily incurred in attending to official business.

**63-2-3. Vacancy—How Filled.**

Vacancy in the office of the director of finance occurring by reason of death, resignation or other cause, or by rejection by the senate, shall be filled by the appointment of another person by the governor which appointment shall be submitted by him to the senate for confirmation or rejection in the first session thereof after the appointment, or, if made while the senate is in session, at that session.

**63-2-4. Director Not to Hold Other Office—Exception.**

The director of finance shall devote his full time and attention to his official duties and shall not hold any other office under the laws of this state, except ex officio such offices or titles as may be conferred upon him by law. The director of finance shall not hold office under the laws

of any other state or under the government of the United States, but this provision shall not be construed to prevent the director from holding such nominal position or title as may be required by law as a condition to participation by the state in any appropriation or allotment of any money, property or service which may be made or allotted for any of the functions of the department.

**63-2-7. Official Seal—Authentication of Records.**

The director of finance shall adopt and use an official seal and file an impression and a description thereof in the office of the secretary state. Copies of the department's records and proceedings and copies of the documents and papers in its possession may be authenticated with the seal of the director of finance or his duly authorized agent and when so authenticated shall be received in evidence to the same extent and with the same effect as the originals.

**63-2-12. Director of Finance to Appoint Officers.**

With the approval of the governor, the director of finance shall appoint a budget officer, an accounting officer, a personnel officer, a purchasing agent and such other administrative officers as may be necessary to efficiently and economically perform the functions of the department of finance. The director of finance is authorized to organize the department and employ other assistants as may be necessary to discharge the functions of the department, and delegate to such assistants, officers, and employees any of the powers and duties subject to his control and under conditions as he may prescribe. Authorization to exercise any delegated powers shall be by written order filed with the secretary of state.

**63-2-13. Director to Fix Schedule of Salaries for All State Officers.**

The director of finance shall prescribe and fix a schedule of salaries for the officers, clerks, stenographers and employees of all state offices, departments, boards and commissions, except where such salaries are fixed by statute, by appropriation or where agency governing boards are authorized by statute to fix the salary of certain officers. The director of finance must in all cases give certification as to the availability of funds to pay salaries. The board of examiners in conducting any examination of claims shall not have authority to fix, reset or arbitrarily refuse to pay salaries set by the director of finance or officers' salaries as determined by agency governing boards. Such schedule of salaries shall have the force of law in all state offices, departments, boards and commissions, and shall in no case be exceeded without the express approval of the director of finance. No salary schedule shall be put into effect until approved by the governor.

**63-2-14—Director to Approve or Disapprove for Personnel or New Positions.**

The director of finance shall examine all requests for personnel and shall approve or disapprove the same and no new position shall be created and no vacancy shall be filled until the director has certified to the department requesting the creation of a new position or the filling of the vacancy that the position is necessary to carry on the work of

such department in an efficient and business-like manner and that the necessary funds therefor are available to the department. The director shall investigate the need for every existing position and determine the classification thereof in every department and shall prescribe the most effective means of discounting unnecessary positions.

**63-2-15—Director to Establish Mileage Schedule for All State Employees—Exceptions.**

The director of finance shall establish mileage and travel expense schedules and set up rules and regulations for travel of all state officers, employees and part-time officials; and such schedules shall have the force of law in all departments and no voucher for travel expense shall be paid until the same has been approved by the director. No obligation shall be incurred for travel outside of the state without the advance approval of the governor through the director of finance. Such approval shall consist of a certification as to the availability of funds as well as a review of the necessity and desirability of such travel. This provision shall not apply to the legislature, legislative committees or members and employes of the legislative council.

**63-2-16. Director to Collect All State Securities—Deeds—Abstracts of Title.**

The director of finance shall collect and deposit with the state treasurer all stocks, evidences of indebtedness, bonds and securities of every kind and nature. The state treasurer shall keep a complete record of the same and credit each to the proper fund or account and the state treasurer shall release the same only upon the order of the director. Deeds, abstracts of title and all other documents evidencing title to or interest in property belonging to the state or any department thereof shall be deposited with the director of finance.

**63-2-17. Director to Designate Employees Who Shall Give Bonds—Amounts.**

The director of finance shall designate the officers and employees of the state who shall give bonds for the faithful performance of their official duties, such bonds shall be at the expense of the state and shall be in such form and in such amounts and with such surety or sureties as the director shall from time to time determine. Such surety bonds in the discretion of the director shall be obtained as the result of competitive bidding. Where the legislature has designated that certain officers and employees of the state shall furnish bond for the faithful performance of their official duties and having fixed the amount thereof, the director of finance shall proceed to determine only the form and kind of surety or sureties to be obtained.

**63-2-18. Director to Appoint Budget Officer With Approval of Governor.**

The director of finance with the approval of the governor shall prepare and submit to the governor a state budget conforming with section 67-1-7. The budget shall include a proposed program of expenditures for the various departments, agencies and institutions of government by function, division, program or activity authorized. The direc-

tor shall also perform all duties required by law to be performed by him in connection with the preparation of the budget and execution of budgetary control over state departments and allotment of appropriations thereto.

**63-2-19. Maintenance of Budget Control System.**

The director of finance shall maintain a budget control system, recording the constituent elements of the general fund and of each special fund in their proper relationship to each other and shall keep all accounts in balance; shall furnish to the governor and to the legislature when requested reports prepared by the department of finance showing the condition of the general fund and each special fund of the state; the available cash resources of the general fund and each special fund of the state and as to each such fund the estimated revenue and anticipated time of collection, the current encumbrances, future obligations and estimated date they accrue, appropriation, obligations, quarterly allotments, unencumbered allotments, reserves and surplus; as well as the capital assets and liability accounts of the state, and the valuation account of all other state property, and shall require the head of each department to submit to him statements containing such information and data as will enable him to furnish to the governor the reports above prescribed.

**63-2-20. Budgetary Control Over All State Departments—Work Programs.**

The director of finance shall exercise budgetary control over all state departments, institutions and agencies. The director shall require the head of each department to submit to him not later than May 15th of each year, a work program for the ensuing fiscal year and may at any time require any department to submit a work program for any other period. Such program shall include appropriations and all other funds from any source whatsoever made available to said department for its operation and maintenance and shall show the requested allotments of said appropriations and other funds by quarterly periods for the ensuing or current fiscal year by function, division, program or activity authorized. The director of finance shall review the work program of each department and shall, if the governor deems necessary, revise, alter, decrease or change such allotments before or after approving the same; or, may proceed to make independent allotments which shall be binding on the said department when a work program is not furnished by any said department as required by this section. The aggregate of such allotments shall not exceed the total appropriations or other funds from any source whatsoever made available to said department for the fiscal year in question. The director of finance shall transmit a copy of the allotments when approved by the governor to the head of the department concerned and also a copy to the auditor of the state. The director of finance shall thereupon permit all expenditures to be made from the appropriations or other funds from any source whatsoever on the basis of such allotments and not otherwise, unless such allotments or any part thereof are subsequently revised or changed by the director of finance. The director shall examine and



approve or disapprove all requisitions and requests for proposed expenditures of the several departments, except salaries or compensation of officers fixed by law in which case the director shall certify only the availability of funds, and no requisitions of any of the departments shall be allowed nor shall any obligation be created without the approval and the certification of the director. The director shall employ such budget examiners as may be necessary to approve allotments and examine the propriety of all proposed expenditures and facilitate program planning and management improvement of state operations. It is the intent of the legislature that the department of finance shall examine and pass upon all proposed expenditures. Any examination of claims as may be conducted by the board of examiners shall be made prior to payment but only after the obligation has been incurred and an account has been submitted and audited by the state's accounting officer.

**63-2-21. Director to Examine All Requisitions—Pre-Audit Claims—Prescribe forms.**

The director of finance shall exercise accounting control over all state departments and agencies and prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations. The director of finance shall pre-audit all claims against the state for which an appropriation has been made. The director shall, with the approval of the state auditor as to the adequacy of such documents in facilitating the post audit of public accounts, prescribe all forms of requisitions, receipts, vouchers, bills or claims to be used by the several departments and the forms, procedures, and records to be maintained by all departmental, institutional or agency store rooms and exercise inventory control over such store rooms. The director of finance shall, with the approval of the state auditor, prescribe all forms to be used by the department of finance.

**63-2-22. Establish Accounting System—Appoint Accounting Officers.**

The director of finance shall establish a comprehensive state accounting system and shall, with the approval of the governor, appoint an accounting officer who shall supervise and administer the state accounting system. Accounting systems may be maintained by offices, departments, agencies, and institutions of the state only with the approval of the director of finance, and such systems shall be prescribed and controlled by the department of finance. The director of finance may, with the approval of the governor, require any department or institution to install and maintain a cost accounting system such as will disclose the unit cost of material or service produced or performed by such department.

**63-2-23. Establish Central Purchasing and Stores.**

The director of finance shall exercise the powers and perform the duties relating to the purchase of all supplies, materials, equipment and services required in the administration of any department of the state, the administration of a central purchasing and store system for the departments of the state and the exercise of inventory control over all departments.

**63-2-24. Director to Furnish Bond.**

The director of finance shall furnish a surety bond to the state in the sum of \$10,000 conditioned on the faithful performance of his duties. The director shall require bonds of all agents authorized to purchase for the state for the faithful performance of their official duties in such form and amounts as the director may determine.

**63-2-25. Purchasing Standardization Committee — Membership — Authority.**

There shall be within the department of finance a purchasing standardization committee which shall be composed of the secretary of state, the state auditor, the state treasurer, the superintendent of public instruction, the chairman of the road commission, the chairman of the public welfare commission, the chairman of the state board of agriculture, the chairman of the commission of business regulation, the chairman of the tax commission, the chairman of the industrial commission, the chairman of the liquor control commission, and the director of finance. The members of said committee shall serve without additional compensation. The committee shall have authority:

- (a) To formulate and declare the purchasing policy of the state.
- (b) To classify supplies, materials and equipment required by the various departments of the state government.
- (c) To adopt standards of quantity and quality to control purchase of supplies, materials and equipment required for the state and its various departments.
- (d) To prepare, adopt and promulgate specifications of such standards and to formulate a system of cataloging and accounting for all real and personal property purchased for the use of the state or of any of its departments.

**63-2-26. Cooperation of State Departments.**

The purchasing standardization committee shall seek the advice, assistance and cooperation of all state departments as to their particular requirements in the preparation or revision of any standard or specification adopted by it and shall ascertain the precise requirements of each department. Each specification adopted for any commodity shall insofar as practicable satisfy the requirements of the majority of the departments having use for the commodity. After its adoption each standard or specification until revised or rescinded shall control in the purchase of every commodity to which it applies; provided, however, that the director of finance with the approval of the governor may purchase commodities not complying with such specifications or standards when required to meet the particular needs of any department.

**63-2-27. Director Shall Be Chairman—Quorum.**

The director of finance shall be the chairman of the purchasing standardization committee. In the absence of the director the state's purchasing agent shall serve as chairman. The committee shall meet upon the call of the governor or of its chairman or any seven members upon two days notice to each of the members thereof. Seven members shall constitute a quorum for the transaction of business. The committee

shall meet as often as necessary but at least once every six months.

**63-2-28. Enforce Rules and Regulations.**

The director of finance shall make and enforce rules and regulations to make effective the standards and specifications controlling state purchases adopted by the purchasing standardization committee. The director shall also make uniform rules relating to the advertisements for proposals, the opening of bids and the making of awards; keep a catalog of prices current, and analyze and tabulate prices paid and the quantities purchased by it, and require periodical reports of supplies on hand and estimates of future needs of the various departments. The director of finance shall make and enforce rules and regulations governing requisitions for, and purchases, exchanges, transfers, leases and sales of property and supplies for and by the several departments and the distribution of the proceeds of any disposition of the same; provided, however, that all leases prior to acceptance shall be approved as to form by the attorney general and a copy thereof shall be kept on file in the office of the director. The director shall determine from time to time what shall be included within emergency purchases and emergency sales and shall regulate the same; and the director shall make such other rules and regulations as may be necessary in the exercise of the powers and performance of the duties hereby given and imposed.

**63-2-29. Director to Procure All Supplies—Equipment—Services.**

The director of finance shall procure by contract or purchase, equipment, materials, provisions, furniture and furnishings, instruments and apparatus, tools, machinery, stationery, light, fuel, heat, water and all office supplies and services, printing and binding and insurance necessary for and required by the legislature of the state of Utah and the several departments of the state government, and contract for the publication of the laws, codes, reports and journals, and the decisions of the Supreme Court and all proclamations and other notices required by law to be published by any official or department of the state; provided, that all purchases in excess of \$1,000, except in cases of emergency and in the cases of the purchase of insurance, automobiles and trucks, shall be made on contract, let after advertisement for bids, to the responsible bidder making the lowest and best bid. The director may reserve the right to reject any and all bids.

**63-2-30. Director to Sell All Unneeded State Equipment.**

The director of finance shall sell any material, equipment, supplies or real property belonging to the various state agencies, not required for state purposes, and pay the proceeds thereof into the state treasury to the credit of the general fund, or in the discretion of the director and the governor to the credit of the particular department from which such material, equipment, or supplies or property may be taken. The director of finance shall maintain a complete inventory of all state property belonging to the various agencies of state government, both real and personal. The director of finance shall operate and maintain a central mailing service, a central motor car pool, and a central store for all state departments and agencies. All state departments and agencies shall subscribe to these services when deemed advisable and practicable

by the director and the governor. Microfilming, duplicating, addressograph and other central services may be established when deemed advisable. The director shall prescribe a schedule of fees to be charged for all such services rendered by the state for any department or agency. The fees so prescribed by the director shall be, insofar as practicable, commensurate with the cost of furnishing such services.

**63-2-31. Make Rules and Regulations.**

The director of finance shall inquire into and make rules and regulations for inspecting and testing articles and materials furnished to, or work and labor performed for, the several departments for the purpose of ascertaining that the prices, quality and amount of such articles of labor are fair, just and reasonable, and that all the requirements express or implied pertaining thereto have been complied with, and may reject and disallow all requisitions for articles, materials or labor not complying with such rules.

**63-2-32. Bulletins to Be Published.**

The director of finance shall publish from time to time for the information of the several departments and of the general public bulletins of the work of the state government.

**63-2-33. Control of State Investments.**

The director of finance after consulting with the state treasurer shall make and control the investments of all permanent funds of the state, when by law said funds may be invested subject to such restrictions as are imposed by law.

**63-2-34. Securities in Which Funds May Be Invested.**

The director of finance shall invest all funds which it is authorized by law to invest when not otherwise specifically limited in state, municipal, or school district bonds of this state, or in bonds or other obligations of the United States or in bonds guaranteed both as to principal and interest by the United States or bonds of federal land banks, notes or bonds secured by mortgage insured by the federal housing administrator or in bonds or debentures of federal home loan banks or to the extent to which they are insured, in shares or accounts of either state chartered or federal chartered savings and loan and building and loan associations which are insured by the federal savings and loan insurance corporation, or notes or bonds secured by first mortgages on improved real estate when such notes or bonds do not exceed forty per cent of the cash value of the respective properties covered by such mortgages when purchased by the director. The state treasurer shall honor and pay all vouchers drawn on any fund, which the director of finance is authorized by law to invest, for the purchase of such investments when signed by the director of finance upon delivery of such bonds or securities to him when there is attached to such voucher a certified copy authorizing the purchase of such bonds and the director of finance may sell any of such bonds, and the proceeds thereof shall be paid by the purchaser to the state treasurer.

**63-2-35. Taxing Districts to Offer Bond Issues to Director Before Other Sale.**

The boards or officers of the several taxing districts of the state shall offer in writing all original bond issues and all refunding issues of bonds of their respective taxing districts to the director of finance prior to advertising the same for sale, and the director of finance shall, within five days after receipt of such written offer either reject such offer or notify the issuer of the terms and conditions on which he is willing to purchase such bond issue, and, if the officials of the issuer are of the opinion said bond issue may be sold elsewhere at a lower rate of interest or on better terms such officials may reject the offer of the director and proceed to sell such bond issue elsewhere.

**63-2-36. Departments Failing to Comply—State Auditor to Withhold All Warrants.**

Whenever in this act power is vested in, or any duty is imposed upon the director of finance, the duty is imposed upon all other departments to do all things necessary to make such power effective and to enable the director to discharge such duties. The state auditor shall withhold all warrants payable on account of any department or to particular officials, employees or accounts, on written notice from the director that such department or any of its officials or employees has failed or is failing to comply with the provisions of this section; such warrants to be withheld until further written notice from the director that the provisions of this section are being fully complied with by such department, its officials and employees and that reparation has been made for all loss caused to the state by such failure to comply with the provisions of this section.

**63-2-38. Universities—Colleges.**

The University of Utah, the Utah State University of Agriculture and Applied Sciences, Weber College and the junior colleges of the state shall be subject only to those provisions of this act as shall be required by the director of finance with the approval of the governor.

**63-2-42. Purchasing From Utah Commission for Adult Blind.**

The director of finance and such agents in charge of purchase and supplies of state institutions, where possible, shall purchase brooms, mops, brushes, rubber mats and other supplies, other than the products of prison labor, from the Utah commission for the adult blind; provided that such goods and supplies are for sale by the Utah commission for the adult blind, provided that said goods and supplies are of standard quality and price.

**63-2-44. Provisions as to Blind to Be Waived—When.**

The executive secretary of the commission for the adult blind shall issue a release from the provisions of this act upon the request of the director of finance when convenience or emergency requires it.

**63-2-45. Board of Supplies Refers to Director of Finance.**

Whenever any existing or continuing law names or refers to the state board of supplies and purchases or the commission of finance, the state's

fiscal officer, or the state purchasing agent, it shall be construed to name and refer to the director of finance.

**Section 2. Sections Repealed.**

Sections 63-2-5, 63-2-6, 63-2-8, 63-2-9, 63-2-10, and 63-2-11, Utah Code Annotated 1953, are hereby repealed.

**Section 3. Governor May Make Supplementary Allotments.**

In cases of emergency the governor is hereby authorized to make supplementary allotments from general contingent appropriations. The amount to be appropriated for contingency purposes, as well as the limits on the amount of any one allotment or total allotments to any one department or agency, shall be determined by each legislature. In advance of making any such allotment, the governor shall notify the legislature through the office of the legislative auditor, of his intent to do so, of the amount to be allotted and the justification thereof. It is the intent of the legislature that such transfers be made only for unforeseeable emergencies, and allotments shall not be made to correct poor budgetary practices or for purposes having no existing appropriation or authorization.

**Section 4. Merit System to Be Established.**

A merit system shall be established within the department of finance. The director of finance shall provide for a state wide system of employment by merit and shall establish a uniform system of job classification and personnel examination, the basis upon which positions of employment in the state service shall be filled. The director shall promulgate and publish rules and regulations covering the conduct of all state employees, a plan of dismissal, provisions for vacation, annual leave, sick leave, hours of employment, and such other matters in the interest of effective, efficient and productive personnel employment. The director shall promulgate rules to prohibit the exploitation of public personnel for political purposes and shall specify that partisan political activity shall not be a basis for employment, promotion, demotion, or dismissal from public employment.

**Section 5. All Property of Merit System Transferred to Department of Finance.**

All book, records, registers, funds, equipment and other property of the existing merit system council are hereby transferred to the department of finance. The existing joint merit system regulations shall remain in effect until such time as they may be amended by the director of finance with the approval of the governor after public notice and hearing. The director of finance shall establish such rules and regulations for employment and provide for any council as may be necessary as a condition to federal participation in operations of state government.

**Section 6. Savings Clause.**

If any provisions of this act, or the application of any provisions to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

**Section 7. Effective Date.**

This act shall take effect upon July 1, 1963.

Approved March 20, 1963.

**CHAPTER 149**

H. B. No. 83

(Passed February 28, 1963. In Effect May 14, 1963)

**MUNICIPAL CORPORATION PURCHASES**

**An Act Providing for the Purchase of Supplies and Equipment for Municipal Corporations and Political Subdivisions by State Department of Finance.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Purchase of Supplies and Equipment.**

The state department of finance may purchase supplies and equipment for towns, cities, counties, school districts, and other municipal corporations and political subdivisions when requested to do so by the municipal corporation or political subdivision. All such purchases and the cost of handling the same shall be at the expense of the municipal corporation or political subdivision and in accordance with the law governing purchases for state departments.

Approved March 1, 1963.

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**CHAPTER 150**

S. B. No. 47.

(Passed March 14, 1963. In effect July 1, 1963.)

**BOARD OF EXAMINERS LAW**

**An Act Amending Sections 63-6-1, 63-6-2, 63-6-11, 63-6-12, and 63-6-13, Utah Code Annotated 1953, Relating to the Powers and Duties of the State Board of Examiners With Respect to the Examinations of Unliquidated Claims, and Repealing Sections 63-6-7, 63-6-8, 63-6-9, 63-6-18, 63-6-19, 63-6-20, and 63-6-21, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Sections 63-6-1, 63-6-2, 63-6-11, 63-6-12, and 63-6-13, Utah Code Annotated 1953, are amended to read:

**63-6-1. General Power—Personnel.**

The governor, the secretary of state and the attorney general shall constitute a board of examiners, with power to examine all claims against the state for which funds have not been provided for the payment thereof, except salaries or compensation of officers fixed by law. No claim against the state for which funds have not been provided, except salaries and compensation of officers fixed by law, shall be passed upon by the legislature without having been considered and acted upon by the board of examiners. The governor shall be the president, and the secretary of state shall be the secretary of the board, and in the absence of either an officer pro tempore may be elected from among the members of the board.

**63-6-2. Meetings.**

The meetings of the Board shall be held upon the call of the president or any two members.

**63-6-11. Form and Verification of Claim.**

Any person having a claim against the state for which funds have not been provided for the payment thereof, or the settlement of which is not otherwise provided for by law, must present the same to the board of examiners, accompanied by a statement showing the facts constituting the claim.

**63-6-12. Notice of Order and Time of Examination of Claims.**

At least 60 days preceding the meeting of each legislature the board must hold a session for the purpose of examining the claims referred to in the last preceding section, and may adjourn from time to time until the work is completed. The board must cause notice of such meeting or meetings to be published in some newspaper at the seat of government and such other newspapers as may be determined by the board for such time as the board may prescribe.

**63-6-13. Adjustment of Claims—Recommendations to Legislature.**

The board must at the time designated proceed to examine and adjust all such claims referred to in Section 63-3-11 of this act, and may hear evidence in support of or against them, and shall report to the legislature such facts and recommendations concerning them as it may think proper. In making its recommendations the board may state and use any official or personal knowledge which any member of the board may have touching such claims. The board shall not pass upon or send to the legislature any claim for which the state would not otherwise be liable were it not for its sovereign immunity. But all claims wherein the state would be liable, were it not for its sovereign immunity, whether recommended by the board for approval or disapproval, shall be reported by the board to the legislature with appropriate findings and recommendations as above provided.

**Section 2. Sections Repealed.**

Sections 63-6-7, 63-6-8, 63-6-9, 63-6-18, 63-6-19, 63-6-20 and 63-6-21, Utah Code Annotated 1953, are hereby repealed.

**Section 3. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

**Section 4. Effective Date.**

This act shall take effect upon July 1, 1963.

Approved March 20, 1963.

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**CHAPTER 151**

H. B. No. 122.

(Passed March 14, 1963. In effect May 14, 1963.)

**WASATCH STATE PARK TRAMWAY**

**An Act Authorizing the State Park and Recreation Commission to Acquire, Construct, Maintain and Operate by Contract, Lease Concession**



**or Otherwise an Aerial Tramway System, Together With the Property, Appliances, Facilities, and Services Necessary or Useful for the Transportation of Persons and Property Between a Point or Points in the Wasatch Mountain State Park and a Point or Points in the Uinta and Wasatch National Forests in the Upper Parts of Big Cottonwood, Little Cottonwood and American Fork Canyons in Salt Lake, Utah and Wasatch Counties in the State of Utah: to Acquire, Maintain and Operate Facilities for the Recreation of the Patrons of the Foregoing Facilities and of the Visitors to the Wasatch Mountain State Park; Exempting Such Bonds and the Interest Thereof From Taxation and Authorizing the State Park and Recreation Commission to Issue Revenue Bonds to Raise Funds for the Foregoing Purposes and to Refund Such Bonds.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. State Park and Recreation Commission to Construct and Operate Aerial Tramway.**

The State Park and Recreation Commission, an agency of the State of Utah, hereinafter referred to as the Commission, is authorized to acquire, construct, reconstruct, improve or extend, maintain and operate, either directly or through others by contract, lease, concession or otherwise, an aerial tramway system for the transportation of persons and property between a point or points in the Wasatch Mountain State Park and a point or points in the Uintah and Wasatch National Forests in the upper parts of Big Cottonwood, Little Cottonwood and American Fork Canyons in Salt Lake, Utah and Wasatch Counties in the State of Utah; to acquire by purchase, contract, lease, permit, donation or otherwise, and to construct, maintain and operate, either directly or through others, by contract, lease, concession or otherwise, all property, rights of way, approach roads, parking and other areas, structures, facilities and services for the convenience and recreation of patrons of said transportation system and visitors to the Wasatch Mountain State Park which the Commission may deem necessary or desirable therefor. Any such contract, lease, concession or other arrangement may be entered into in such manner and upon such terms and conditions as the Commission may deem advisable.

**Section 2. Commission Not Subject to Provisions of Law—Contractors.**

Because of the technicalities involved in the design and construction of the principal facilities contemplated by this act, and only subject to the approval of the State Board of Examiners in each case, construction contracts entered into by the Commission under the authority of this act shall not be subject to the provisions of Section 64-1-4 and 64-1-5, Utah Code Annotated 1953, and any amendments thereto, and shall be governed solely by this act; provided that the provisions of Chapter 1 of Title 14 of said Code requiring Contractor's bonds are expressly made applicable to any construction contract under this act when the amount of such contract exceeds \$1,000.00.

**Section 3. May Accept Grants and Assistance.**

The Commission is authorized to co-operate and contract with and accept grants or other assistance from any other agency of the State of Utah and from any department, bureau, agency, instrumentality, office or officer of the United States and from the trustees or administrators of any fund established in the interest of conservation or recreation, for the acquisition, construction, maintenance, development and operation of any of the area, facilities, activities or services at any time under, or intended to be brought under the jurisdiction or control of the Commission, expressly including those contemplated by the provisions of this act.

**Section 4. Commission May Authorize Issuance of Revenue Bonds.**

To raise funds for the acquisition, financing, construction, reconstruction, improvement or extension of all or any of the foregoing purposes, projects and facilities, and only with the approval of the State Board of Examiners, the Commission is authorized to issue revenue bonds in such amounts bearing such rate or rates of interest not exceeding six per cent (6%) per annum, with such maturities, in such form and on such other terms and conditions as the Commission, with the approval of the State Board of Examiners, from time to time may deem necessary or convenient.

**Section 5. May Pay Interest and Principal—Make Agreements.**

The Commission may provide by resolution at a duly called regular or special meeting for the payment of the interest and principal of any and all such revenue bonds as may be issued from time to time, and for that purpose may enter into agreements with such other parties and may execute such documents, in such form and substance, and on such terms and conditions as the Commission, with the approval of the State Board of Examiners, may from time to time determine.

**Section 6. Not Be Obligation of State.**

In any and all revenue bonds issued hereunder and in the resolution or resolutions authorizing the same, and in the agreements or documents entered into and executed in connection therewith, neither the payment of the principal or interest of any such bond nor the obligation of any such resolution, agreement or document shall constitute a debt, liability or obligation of the State of Utah or the Commission and are to be paid solely from the revenues received from the operation of the proposed aerial tramway transportation system, visitor care and accommodations and all services in connection with the Wasatch Mountain State Park, as in the proceedings authorizing the issuance of the bonds, shall be pledged to the payment thereof. All bonds issued under this act by the Commission shall contain a recital on their face that neither the payment of the principal or any part thereof, nor any interest thereon, constitute a debt, liability or obligation of the State of Utah or the Commission.

**Section 7. Rates—Tolls—Fees—To Pay Principal of Funds.**

Any resolution or trust indenture authorizing the issuance of the revenue bonds shall provide that all toll rates and charges and fees imposed for the use of all such transportation, visitor care and accommodations, recreational and other facilities and all services, the revenues of which are pledged to the payment of revenue bonds authorized hereunder, shall be at all times fixed in such amounts as will yield sufficient revenues to pay principal of and interest on said bonds, to maintain the necessary reserves in connection therewith and to pay the annual cost of operation and maintenance of any of such facilities, and the Commission may in such resolution or trust indenture pledge to the payment of the principal of and interest on said revenue bonds all or part of the revenues arising from the operation of all such transportation, visitor care and accommodations, recreational and other facilities and all services operated by the Commission in connection with the Wasatch Mountain State Park, whether or not acquired with the proceeds of said revenue bonds, after there shall have been paid from such revenues the annual cost of operation and maintenance of all such facilities including necessary costs of insurance, and the Commission may also in any such resolution or trust indenture reserve the right to issue bonds on a parity with the bonds authorized by said resolution or indenture under such terms and conditions as may be provided therein.

After and subject to the payment of annual operating and maintenance expenses and insurance costs, the bond redemption and interest payments, including reserves therefor, shall constitute a first lien on all such rates, tolls and charges and other revenues received from the use and operation of the project or projects for the acquisition and construction of which such revenue bonds were issued, and of any other revenue received from the operation of facilities in connection with the Wasatch Mountain State Park that may be pledged by the Commission as security for the payment of said revenue bonds and interest for this project or projects.

**Section 8. Bonds Are Negotiable—Exempt From Taxation.**

All bonds issued under the provisions of this act are negotiable instruments except when registered in the name of a registered owner and all such bonds, and the interest or income therefrom, are exempt from all taxation in the State of Utah.

**Section 9. Commission to Fix Terms—Conditions of Bonds.**

The Commission with the approval of the State Board of Examiners may fix the terms and conditions for the sale or other disposition of any authorized issuance of bonds hereunder and may sell any of said bonds at less than the par or face value, but no bond may be sold at a price below the par or face value thereof which would result in a sale price yielding to the purchaser an average of more than six per cent (6%) per annum, payable semi-annually according to standard tables of bond values.

**Section 10. Commission to Implement Development of Tramway.**

The Commission, its officers, employees and agents are hereby authorized to proceed to carry out the necessary procedures to implement the acquisition and development of an aerial tramway system together with the necessary property, appliances, facilities, rights of way and easements necessary or useful in connection therewith and to do anything not inconsistent with law which they deem necessary or convenient to carry out the provisions of this act, whether or not such authority is expressly given herein.

**Section 11. Commission to Refund Revenue Bonds.**

Subject to the approval of the Board of Examiners, the Commission is authorized to refund any revenue bonds that may become due or that may be called with the consent of the holder or holders thereof, whenever such refunding may be deemed necessary or desirable.

**Section 12. Savings Clause.**

If any provision of this act, or application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved March 20, 1963.

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**CHAPTER 152**

S. B. No. 218.

(Passed March 14, 1963. In effect March 20, 1963.)

**WASATCH MOUNTAIN STATE PARK**

**An Act Amending Section 63-11-19A, Utah Code Annotated 1953, as Enacted by Chapter 152, Laws of Utah 1961, Relating to the Authorization of the State Park and Recreation Commission to Enter Into Installment Contracts for the Purchase of Lands for Addition to the Wasatch Mountain State Park and Fixing the Details of Such Contracts; Providing for a Severability Clause and an Effective Date.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 63-11-19A, Utah Code Annotated 1953, as enacted by Chapter 152, Laws of Utah 1961, is amended to read:

**63-11-19A. Contracts for Purchase of Lands for Addition to Wasatch Mountain State Park—Tax Levy for Payment of Principal and Interest.**

1. The state park recreation commission is hereby authorized to enter into real estate installment contracts for the purchase of lands in Wasatch County, Utah, for addition to the Wasatch Mountain State Park.

2. The total principal amount of said contracts entered into pursuant to the authority contained in this section shall not exceed the sum of \$150,000.00 nor the limitation imposed by section 1 of Article XIV of the Constitution of the state of Utah.

3. Said contracts shall be executed by the chairman on behalf of the commission and shall not exceed ten years in duration and shall be payable with interest at a rate not to exceed 3 per cent per annum on the deferred principal installments.

4. The installment payments on the principal of said contracts shall be payable in equal annual installments commencing one year from the date thereof and annually thereafter with interest on deferred payments not in excess of the amount hereinbefore provided. Said contracts may provide that payment of all or any part of the amount due under all or any of said contracts may be accelerated by the commission at any time and from time to time. Such installment contracts shall be in such form and shall bear such details as the commission may determine, and shall be assignable by the seller. When assigned to a bona fide purchaser for value, the payment of the principal installments and interest remaining due at the time of such assignment, shall not be avoided or invalidated for any irregularity or defect in the proceedings for their execution and delivery or for failure of compliance with any of the other terms or conditions of said contracts, but shall be incontestable in the hands of such bona fide purchasers for value.

5. The full faith and credit of the state of Utah is pledged to the payment of such installment contracts and the principal and interest thereof and there shall be and there is hereby levied on all taxable property in the state of Utah, in addition to all other taxes, a direct annual tax sufficient to pay the principal amounts of installments falling due in each year on such contracts, together with applicable interest, provided however, that such tax shall be abated in any year in which sufficient funds provided from other sources to pay the amounts of principal and interest falling due in such year have been made available for such payments.

6. If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

#### **Section 2. Effective Date.**

That this act shall take effect immediately upon approval by the Governor or upon its becoming a law without such approval.

Approved March 20, 1963.

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### **CHAPTER 153**

H. B. No. 13.

(Passed March 14, 1963. In effect May 14, 1963.)

#### **FEDERAL SURPLUS PROPERTY**

**An Act Amending Section 63-17-1, Utah Code Annotated 1953, as Enacted by Chapter 40, Laws of Utah 1953, Relating to Administration and Supervision of the State Agency for Surplus Property.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 63-17-1, Utah Code Annotated 1953, as enacted by Chapter 40, Laws of Utah 1953, is amended to read:

**63-17-1. State Agency for Surplus Property—Creation—Administration and Supervision—Employees.**

There is hereby created and established a Utah state agency for surplus property, which shall be administered by the state director of finance, and which shall be subject to the supervision and direction of the state director of finance. The state director of finance is authorized to appoint, fix the compensation of, and prescribe the duties of employees of such agency.

Approved March 18, 1963.

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**CHAPTER 154**

S. B. No. 12

(Passed February 8, 1963. In effect May 14, 1963)

**MANAGEMENT OF PUBLIC RECORDS****An Act Providing for the Efficient and Economical Management of Public Records.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Records Management Act.**

This act shall be known and may be cited as the "Records Management Act."

**Section 2. Definition.**

As used in this act:

(1) "Public records" comprise all written or printed books, papers, letters, documents, maps, plans, photographs, sound recordings, and other records made or received in pursuance of state law or in connection with the transaction of public business by the public offices, agencies, and institutions of the state and its counties, municipalities, and other subdivisions of government. All such public records made or received by the public offices, agencies, and institutions of the state and its counties, municipalities, and other political subdivisions are state records.

(2) "State agency" means any department, office, commission, board or other unit, however designated, of the executive branch of state government.

**Section 3. State Records Administrator.**

The state archivist is hereby designated the state records administrator, hereinafter called the administrator. The administrator shall establish and administer in the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records.

**Section 4. Duties of Administrator.**

The administrator shall, with due regard for the function of the agencies concerned:

(1) Establish standards, procedures, and techniques for effective

management of records.

(2) Make continuing surveys of paper work operations and recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, storing, and servicing records.

(3) Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant their further keeping.

(4) Obtain reports from state agencies as are required for the administration of the program.

(5) Establish, maintain, and operate a records center for the storing, processing, and servicing of records for state agencies pending their deposit with the Utah State Archives or their disposition in any other manner prescribed by law.

(6) Establish, maintain, and operate centralized microfilming services for state agencies.

#### **Section 5. Duties of Each State Agency.**

The head of each state agency shall:

(1) Establish and maintain an active, continuing program for the economical and efficient management of the record of the agency.

(2) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.

(3) Submit to the administrator, in accordance with the standards established by him, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been created or received by the agency.

(4) Co-operate with the administrator in the conduct of surveys made by him pursuant to the provisions of this act.

(5) Comply with the rules, regulations, standards, and procedures issued by the administrator.

#### **Section 6. Promotion of Records Management.**

The governing body of each county, city, town, district, authority, or any public corporation, or political entity whether organized and existing under charter or under general law shall promote the principles of efficient records management for its records. Such governing body shall, as far as practical, follow the program established for the management of records by state agencies. The administrator shall, upon the request of a local governing body, provide advice and assistance in the establishments of a local records management program.

#### **Section 7. Records Management Programs.**

Upon request, the administrator shall assist and advise the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch

of state government pursuant to the provisions of this act.

#### **Section 8. Care of Public Records.**

All public records made or received by or under the authority of or coming into the custody, control or possession of public officials of this state in the course of their public duties are the property of the state and shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law.

#### **Section 9. Destruction of Records.**

No public record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the records custodian and the state records committee (consisting of the state archivist, the attorney general, and the state auditor) that the record has no further administrative, legal, fiscal, research, or historical value.

#### **Section 10. Administrator—Disposition of Records.**

Non-record materials or materials not included within the definition of records as contained in this act may, if not otherwise prohibited by law, be destroyed at any time by the agency in possession of such materials without the prior approval of the administrator. The administrator may formulate procedures and interpretation to guide in the disposition of non-record materials.

#### **Section 11. Purchase of Equipment.**

All purchases of filing equipment and microfilm equipment, must be approved by the administrator.

#### **Section 12. Rules and Regulations.**

The administrator shall promulgate such rules and regulations as are necessary or proper to effectuate the purposes of this act.

#### **Section 13. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved February 11, 1963.

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### **CHAPTER 155**

H. B. No. 164.

(Passed March 14, 1963. In effect May 14, 1963.)

#### **INDIAN AFFAIRS COMMISSION**

**An Act Amending Section 63-22-2, Utah Code Annotated 1953, Relating to the Indian Affairs Commission, Appointment, Term of Office, and Prerequisites.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 63-22-2, Utah Code Annotated 1953, is amended to read:



**63-22-2. Appointment of Commissioners—Members.**

The governor shall, with approval of the senate, appoint three members to be commissioners whose terms of office shall be six years. Of the members first appointed, the term of one shall expire March 1, 1969, the term of one shall expire March 1, 1967, and the term of one shall expire March 1, 1965, and their successors shall be appointed for a term of six years. Each commissioner shall hold office until his successor is appointed and qualified. One shall be a citizen of the state of Utah residing outside San Juan County, one shall be a citizen residing in San Juan County and one shall be an Indian residing on the Navajo Indian Reservation in San Juan County. All members shall be chosen with due regard to their knowledge and interest in promoting the education, health and welfare of the Indians residing in the state of Utah. The commission shall organize by selecting a chairman.

Approved March 21, 1963.

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**CHAPTER 156**

H. B. No. 106.

(Passed March 13, 1963. In effect May 14, 1963.)

**STATE FIRE MARSHAL**

**An Act Relating to the Adoption of Uniform Codes for Prevention of, and Protection from, Fire, Disaster and Other Hazards: To Provide for Uniform Enforcement of Codes, Establishing a State Board of Fire Prevention, Appropriating Funds for a State Fire Marshal, Establishing the Terms of Office and Duties of Members of the State Board of Fire Prevention, and Designating the Method of Filling Vacancies.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Utah State Fire Prevention Law.**

This act shall be known as the Utah State Fire Prevention Law.

**Section 2. Purposes of Act.**

The purposes of this act are:

(1) To provide for the adoption of uniform minimum codes for prevention of, and protection from, fire, disaster and other hazards in the political subdivisions of the state.

(2) To provide for enforcement of uniform codes in the political subdivisions of the state.

(3) To establish a uniform fire prevention code on all public buildings and to check compliance in all political subdivisions of the state. Where local ordinances cover the uniform code on public buildings, the state fire marshal may delegate the responsibility for inspection and enforcement of the code to the proper local authority.

(4) To coordinate the efforts of all people engaged in fire suppression in the state.

(5) To work aggressively with the local political subdivisions to reduce premium rates for fire insurance as established by the Utah Fire Rating Bureau.

(6) To cooperate with the state board of education in establishing fire prevention education programs and service training programs for firemen.

### **Section 3. Board Created—Office of State Fire Marshal.**

There is created a board to be known as the Utah State Fire Prevention Board, hereinafter known as the board, and an office to be known as the state fire marshal.

### **Section 4. Board—Seven Members—Appointed by Governor.**

The board shall be non-partisan and shall consist of seven members who shall be appointed by the governor of Utah with the advice and consent of the Senate, as follows:

- (1) One shall be a county official.
- (2) One shall be a city official.
- (3) One shall be a member of the Utah State Firemen's Association.
- (4) One shall be a member of the Utah State Board of Forestry and Fire Control.
- (5) One shall be a member of the State Industrial Commission.
- (6) One shall be a member of the Utah Fire Rating Bureau.
- (7) One shall be a citizen appointed at large.

The seven members of the board first appointed shall be appointed on or before the expiration of thirty days after this law shall become effective. Of the seven members first appointed, the first two appointed shall serve for two years; the next two appointed shall serve for four years; the next three appointed shall serve for six years; all seven shall serve from the dates of their appointment. Upon expiration of the terms of the members first appointed, the terms of all members shall be six years, beginning the day following the expiration of the preceding term. Upon the appointment of the board, the members thereof shall meet forthwith and select from the members a chairman and such other officers as the board may deem necessary. A majority of the members of the board shall constitute a quorum.

### **Section 5. Meetings of Board.**

After its first meeting the board shall hold regular semi-annual meetings for the transaction of its business at a time and place to be fixed by the board, and shall hold such other meetings as may be necessary for proper transaction of business.

### **Section 6. Expenses of Board.**

The members of the board shall receive no salary from the State of Utah, but shall be reimbursed for their actual and necessary expenses while engaged in official duties.

### **Section 7. Duties of Board.**

The board shall:

- (1) Draft for recommendation to the political subdivisions of the state, codes, regulations and rules for establishing minimum standards for the prevention of fire disaster or panic in any building or structure within the state; and codes and regulations governing the handling of

chemical, gaseous, explosive, radioactive or other hazardous substances. This shall not invalidate codes, regulations or rules already in force in any political subdivisions of the state.

(2) Appoint a state fire marshal who shall be qualified by education and experience to perform the duties the board shall prescribe.

(3) Provide for the employment of field assistants and other salaried personnel as required; and prescribe regulations for deputizing qualified persons to act as deputy fire marshals, and to secure special services in time of emergency.

#### **Section 8. Marshal—Duties—Salary.**

The state fire marshal shall devote his full time to the performance of his duties as directed by the board, and shall receive from the state as compensation therefor a salary to be fixed by the board.

#### **Section 9. Enforce Codes—Regulations and Standards.**

The fire marshal or the fire chief of any city, town or county fire department, or the fire officer of any fire district and their authorized personnel shall enforce in their areas the codes, regulations and standards as adopted.

#### **Section 10. Appropriation of \$30,000.**

There is hereby appropriated from the general fund of the State of Utah not otherwise appropriated the sum of \$30,000 to be used in defraying the costs and expenses of administering this act.

#### **Section 11. Savings Clause.**

If any part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If any part of this act is invalid in one or more of its applications, the part remains in effect in all the valid applications that are severable from the invalid applications.

Approved March 22, 1963.

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### **CHAPTER 157**

H. B. No. 59.

(Passed March 13, 1963. In effect May 14, 1963.)

#### **STATE PLANNING COORDINATOR**

**An Act Providing for a State Planning Coordinator, Prescribing His Duties and Functions, and Appropriating \$50,000.00 from the General Fund to the Governor for the Purposes of This Act.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. State Planning Coordinator.**

There is hereby established a state planning coordinator, whose duties shall be as provided in this act. It shall be the function of the planning coordinator to act as the governor's advisor on state, regional, metropolitan and local governmental planning matters relating to public improvements and land use. Nothing contained in this law shall operate in derogation of planning powers conferred upon departments, agencies or instrumentalities of state or local governments by any existing law.

**Section 2. To Counsel with Representatives of Departments.**

The state planning coordinator will counsel with the authorized representatives of the state road commission, the state building board, the state board of health, the state industrial commission, the water and power board, office of the state engineer, the state parks and recreation commission, the state land board, the state fish and game department and other proper persons concerning all state planning matters.

**Section 3. Governor to Appoint Coordinator.**

The governor will appoint to the office of state planning coordinator a person qualified and experienced for such a function. His salary shall be determined by the governor, and he shall serve at the pleasure of the governor. The state planning coordinator will be directly responsible to the governor in the performance of his duties.

**Section 4. Duties.**

The state planning coordinator shall:

(1) Receive and review plans of the various state agencies and local subdivisions of governments relating to public improvements and advise these agencies of any conflicting land use, plans or proposals;

(2) Act as the governor's planning agent in planning public improvements and land use and in this capacity undertake special studies and investigations and submit reports and render advice to the governor;

(3) Provide information and cooperate with the state legislature or any of its committees in conducting planning studies;

(4) Cooperate with and exchange information with federal agencies and local, metropolitan, or regional agencies pursuant to federal, state, regional, metropolitan and local programs;

(5) Make such recommendations to the governor as he considers advisable for the proper development and coordination of plans for state and local governments.

**Section 5. State Advisory Planning Committee.**

The state planning coordinator will, when acting in conjunction with the officers listed in section 2 hereof and when called together by the governor, constitute the state advisory planning committee and may, when designated by the governor, receive funds made available by the federal government under present or future acts or such other public laws as may be enacted by the Congress of the United States.

**Section 6. \$50,000 Appropriated.**

There is appropriated to the governor from the general fund, from funds not otherwise appropriated, to effectuate the purposes of this act, the sum of \$50,000 for the period beginning with the effective date of this act and ending June 30, 1965.

Approved March 16, 1963.

# STATE INSTITUTIONS

## CHAPTER 158

H. B. No. 218.

(Passed March 14, 1963. In effect May 14, 1963.)

### SCHOOL FOR DEAF AND BLIND AND COMMISSION OF BLIND

**An Act Amending Sections 64-3-1, 64-3-3, 64-3-5, 64-3-6, 64-3-9, 64-3-10, 64-3-11, 64-3-17, 64-3-18, 64-3-18.1, 64-3-18.2, 64-3-18.4, 64-3-18.5, 64-3-20, 64-3-21, 64-3-22, 64-3-23, 64-3-27, Utah Code Annotated 1953, Relating to State Institutions, Providing Training for the Deaf Under 21 Years of Age, Eliminating the Requirement for Members of the Board of Trustees of the School for the Deaf to Execute a Bond, Eliminating the Requirement of the Board of Trustees Meeting at the School in March, June, September, and December of Each Year, Providing that the President of the Utah State Board of Education shall be President of the Board of Trustees of the Utah School for the Deaf, Eliminating the Requirement for a Secretary of the Board of Trustees of the Utah School for the Deaf, Providing that the Superintendent of the School for the Deaf shall be a Competent Educator of the Deaf or the Blind Instead of the Deaf and the Blind, Providing Training for the Blind who are Mentally and Physically Able to Profit from Instruction, Eliminating the Word "Mute" from Compulsory Attendance, Increasing the School Year from Six to Nine Months for the Utah School for the Deaf and the Blind, Extending the Minimum Age from Eight to Six Years of Age for Attendance at the Utah Schools for the Deaf and the Blind, and Providing that the Advisory Council Advise the Superintendent of the Utah School for the Deaf and the Blind as Well as the Board of Trustees, Changing the Name "Utah Commission for the Blind" to "Utah Division of Services for the Visually Handicapped," Providing that the Division shall Administer Such Rehabilitation Activity for the Visually Handicapped as the Governing Board may Assign to It, and Permitting the Revolving Funds to be Expended for the Purchase of Equipment in Addition to Raw Materials as Presently Authorized and Designating the Division as the Agency of the State Regarding Specialized Materials for Use by the Blind Made Available by the Library of Congress and Transferring to the Division Funds Appropriated to the State Library Commission for the 1963-65 Biennium for Such Purposes.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Sections Amended.

Sections 64-3-1, 64-3-3, 64-3-5, 64-3-6, 64-3-9, 64-3-10, 64-3-11, 64-3-17, 64-3-18, 64-3-18.1, 64-3-18.2, 64-3-18.4, 64-3-18.5, 64-3-20, 64-3-21, 64-3-22, 64-3-23, 64-3-24, 64-3-27, Utah Code Annotated 1953, are amended to read:

**64-3-1. A Body Corporate — Location.**

The institution for the deaf, heretofore made a body corporate under the name of the Utah School for the Deaf, shall continue as established and located in Ogden, in the County of Weber.

**64-3-3. Purposes — Qualification of Pupils.**

The purposes of the school shall be to provide a practical education for the deaf under twenty-one years of age, who are otherwise physically and mentally able to profit from instruction, and to instruct them to the end that they may become self-supporting and useful citizens. Individuals above the age of twenty-one years capable of receiving beneficial instruction, but incapable on account of deafness or inability to speak, of receiving adequate instruction in the common schools, may, in the discretion of the board of trustees, be admitted to the school and receive instruction. Residents of the state shall be entitled to the benefits of the school free of expense. Pupils from other states may be received into the school and instructed on such terms as the board of trustees may prescribe.

**64-3-5. Official Oaths and Bonds.**

Each member of the board before entering upon the duties of his office shall take the constitutional oath.

**64-3-6. Meetings.**

The board shall meet at the school as often as may be necessary.

**64-3-9. President — Term — Vacancy.**

The president of the state board of education shall be the president of the board of trustees of the Utah School for the blind. A vacancy in his office may be filled by the board for the remainder of the term.

**64-3-10. Superintendent — Secretary — Treasurer.**

The board shall appoint a superintendent, whose salary shall be fixed by the board in accordance with the standards adopted by the department of finance. It shall also appoint a treasurer who shall give a bond to the school in its corporate name in such form and in such amount as shall be determined by the department of finance.

**64-3-11. Qualifications.**

The superintendent of the school shall be a competent expert educator of the deaf or the blind, and he must be acquainted with the school management and class instruction of deaf or blind persons. Subject to the approval of the board, the superintendent may select and dismiss all instructors or employees of the school. He shall be responsible for the care of the premises and of the property of the school, for the control of instructors and employees, for the regulation of the household, for the discipline of the school, for the arrangement and execution of a proper course of study and manual training, and for the training of the pupils in morals and manners. He shall have general oversight of all the internal affairs of the school. The superintendent may be removed at any time by a vote of two-thirds of the members of the board of trustees.

**64-3-17. Purposes — Qualifications of Pupils.**

The purposes of the school shall be to provide a practical education for the blind of the state, under twenty-one years of age, who are otherwise mentally and physically able to profit from instruction, and to instruct them to the end that they may become self-supporting and useful citizens. Residents of the state shall be entitled to the benefits of the school free of expense. Pupils from other states may be received into the school and instructed on such terms as the board of trustees may prescribe.

**64-3-18. Commission for the Blind — Powers and Duties.**

Persons above the age of twenty-one years, capable of receiving beneficial instruction, but incapable on account of blindness or defective sight of receiving adequate instruction in the common schools, may in the discretion of the board of trustees, be admitted to the school and receive instruction. The state board of education shall be the governing board of the Utah Division of Services for the Visually Handicapped, hereinafter designated as the "division" and this division shall have general supervision of the blind of the state except as otherwise provided, shall prepare and maintain a register of the blind in the state which shall contain all such pertinent facts as the board may deem important. It may establish, equip and maintain such homes and workshops for the industrial training of the blind as it may deem necessary, furnish the needed materials and tools therefor and aid in the marketing of the products of their work. It may also provide a circulating library for the blind of the state and shall be authorized to become, instead of the state library commission, the agency for the state for supervision and administration of the books, sound reproduction recordings, musical scores, instructional texts, and other specialized materials for use by the blind received from or loaned by the Library of Congress.

The division shall also have authority to institute and supervise for the blind of the state recreational services, a sight conservation program, home teaching services, social case work, placement services, instruction facilities, and to employ personnel to carry out the provisions of this act. The division shall administer such rehabilitation activity for the visually handicapped as the governing board may assign to it.

**64-3-18.1. Transfer of Dixon Home on Weber College to Commission for the Blind.**

The President's Home, also known as the "Dixon Home," on the campus of Weber College, together with fixtures and appurtenances thereto, including the use of the land on which it stands, is hereby transferred to the Utah Division of Services for the Visually Handicapped for use thereby for offices, meetings, workshops, or any other proper use in the performance of the statutory responsibilities and obligations of said division.

**64-3-18.2. Consultant of Sight Conservation and Prevention of Blindness.**

There is created within the Utah Division of Services for the Visually Handicapped the position of consultant of sight conservation and prevention of blindness.

**64-3-18.4. Compensation.**

The compensation of the consultant of sight conservation and prevention of blindness shall be fixed by the Utah State Board of Education.

**64-3-18.5. Revolving Fund — Appropriation — Use — Credit Funds Not to Revert to General Fund.**

There is hereby appropriated to the Utah Division of Services for the Visually Handicapped the sum of \$12,000 to be used by the division as a revolving fund for the purchase of equipment and raw materials for manufacture of products by the division and to pay the wages of producing employees of the Ogden workshop for the blind. All fees received by the division for sales and services shall be recovered into the revolving fund and all withdrawals therefrom shall be authorized by the appropriate officials of the division and shall be substantiated by proper vouchers and supporting receipts. The revolving fund and all credits accruing thereto shall not revert to the general fund at the close of the biennium but shall serve as a continuous fund for the financial maintenance of the producing functions of the division at the Ogden workshop for the blind.

There is hereby authorized a transfer to the Division of Services for the Visually Handicapped on July 1, 1963, of that portion of the funds appropriated to the state library commission for the period ending June 30, 1965, for the administration of the books, sound reproduction recordings, musical scores, instructional texts and other specialized materials for use by the blind received from or loaned by the Library of Congress.

**64-3-20. Compulsory Attendance.**

Every parent, guardian or other person having control of any deaf or blind child between the ages of six and eighteen years, who on account of its deafness or defective sight is unable to be educated in the public schools, shall be required to send such child to the Utah School for the Deaf or the Utah School for the Blind for at least nine months of each school year, except in cases where it appears to the satisfaction of the board of trustees:

(1) That such child is taught at home by a competent teacher in the same branches and the same length of time as children are required by law to be taught in the state school; or,

(2) That such child has already acquired proficiency in the branches of learning taught in the state school; or,

(3) That such child is in such physical or mental condition (which must be certified, if required, by a competent physician) as to render such attendance inexpedient or impracticable.

**64-3-21. Neglect of Parents or Guardian — Penalty.**

Any such parent, guardian or other person having control of any to-



tally deaf or blind child between the ages of six and eighteen, who fails to comply with the provisions of the next preceding section, after having been notified of its requirements, is guilty of a misdemeanor.

**64-3-22. Workshop of Commission — Employment — Preference — Persons With Disabilities Other Than Blindness.**

The division may, in its discretion, employ in its workshops, persons with disabilities other than blindness where the aid of such workers may facilitate and supplement the production of the blind employees. Preference in the matter of employment however, shall always be given to blind persons.

**64-3-23. Contracts with Private Persons or Firms — Place of Performance.**

The division may enter into contracts with individuals, business firms, or manufacturers for the performance of any operation of assembling, packaging, fabricating, or manufacturing. Such work shall be done under the direction of the division, and may be done in either the workshops of the division or in the homes of the employees of the division.

**64-3-24. Revolving Fund — Appropriation for — Purpose and Use — Disbursements — Continuity.**

There is hereby appropriated to the division the sum of \$25,000.00 to be used by the division as a revolving fund for the purchase of equipment and raw materials for manufacture of products by the division and to pay the wages of producing employees. All fees received by the division for sales and services shall be covered into the revolving fund and all withdrawals therefrom shall be authorized by the appropriate officials of the division and shall be substantiated by proper vouchers and supporting receipts. The revolving fund and all credits accruing thereto shall not revert to the general fund at the close of the biennium but shall serve as the continuous fund for the financial maintenance of the producing functions of the division.

**64-3-27. Duties of Advisory Council.**

It shall be the duty and function of the advisory council to make suggestions to and to advise the superintendent of the schools and the board of trustees of the schools with respect to their policies, rules or regulations, the operation of the schools and the conduct and the methods of their superintendent and employees. It shall be the duty of the boards to receive and consider the suggestions and advice of the advisory council, but nothing herein contained shall be construed to require the board to adopt the same or to conform its practices hereto.

Approved March 22, 1963.

## CHAPTER 159

H. B. No. 86.

(Passed March 14, 1963. In effect May 14, 1963.)

**CONTROL OF MENTALLY ILL**

**An Act Amending Sections 64-7-7, Utah Code Annotated 1953, and Sections 64-7-33, and 64-7-34, Utah Code Annotated 1953, as Amended by Chapter 124, Laws of Utah 1953, and Sections 64-7-41, and 64-7-48, Utah Code Annotated 1953, Relating to Supervision and Control of Mentally Ill by the Public Welfare Department; Defining Institutions, Admissions to the Utah State Hospital, Patient Privileges, and the Transfer of Patients.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Section 64-7-7, Utah Code Annotated 1953, and Sections 64-7-33, 64-7-34, Utah Code Annotated 1953, as amended by Chapter 124, Laws of Utah 1953 and Sections 64-7-41, and 64-7-48, Utah Code Annotated 1953, are amended to read:

**64-7-7. Supervision and Control of Mentally Ill Persons.**

The public welfare commission shall have the supervision and control of mentally ill persons in the state, who have been admitted to its care under the provisions of this act, whether residing in the hospital or elsewhere.

**64-7-33. Application for Admissions — Certification — Endorsement of Certificate.**

A. Any individual may be admitted to the Utah State Hospital upon

(1) Written application by a friend, relative, spouse, or guardian of the individual, a health or public welfare or peace officer, or the head of any institution in which such individual may be. Institution as used herein shall be limited to any hospital, jail, prison, or agency duly registered under the provisions of Section 58-15-2, Utah Code Annotated 1953, or a facility regularly used by the state department of public welfare or its licensees. And

(2) A certification by two designated examiners that they have examined the individual and that they are of the opinion that

(a) He is mentally ill, and

(b) Because of his illness he is likely to injure himself or others if allowed to remain at liberty, or

(c) Is in need of care or treatment in a mental hospital, and because of his illness, lacks sufficient insight or capacity to make responsible application therefor.

An individual with respect to whom such a certificate has been issued may be admitted on the basis thereof at any time before the expiration of fifteen days after the date of examination, exclusive of any period of temporary detention authorized under Section 64-7-36.

B. Such a certificate, if it states a belief that the individual is likely to injure himself or others if allowed to remain at liberty, shall, upon endorsement for such purpose by the head of a local board of health

or by a judge of a district court or by a member of the board of county commissioners of the county in which the individual is resident or present, authorize any health or peace officer to take the individual into custody and transport him to the Utah State Hospital.

**64-7-34. Admission to Utah State Hospital — Application — Certification of Physician.**

A. Any individual may be admitted to the Utah State Hospital upon

(1) Written application by a friend, relative, spouse, or guardian of the individual, a health or public welfare or peace officer, or the head of any institution as defined in section 64-7-33 stating his belief that the individual is likely to cause injury to himself or others if not immediately restrained, and the grounds for such belief, and

(2) A certification by at least one licensed physician that he has examined the individual and is of the opinion that the individual is mentally ill and, because of his illness, is likely to injure himself or others if not immediately restrained.

An individual with respect to whom such a certificate has been issued may be admitted on the basis thereof at any time before the expiration of three days after the date of examination.

B. Such a certificate, upon endorsement for such purpose by the head of a local board of health, a judge of the district court or a member of the board of county commissioners of the county in which the individual is present, shall authorize any health or peace officer to take the individual into custody and transport him to the Utah State Hospital.

**64-7-41. Transfer of Patients.**

(a) The department of public welfare may transfer, or authorize the transfer of, an involuntary patient from one hospital to another if it determines that it would be consistent with the medical needs of the patient to do so. Whenever a patient is transferred, written notice thereof shall be given at least ten days prior to such transfer to his legal guardian, parents, and spouse, or, if none be known, his nearest known relative or friend.

(b) Upon receipt of a certificate of an agency of the United States that facilities are available for the care or treatment of any patient hospitalized pursuant to section 64-7-36 and that the patient is eligible for care or treatment in a facility or institution of such agency, the department of public welfare may transfer him to such agency for care or treatment. Upon effecting any such transfer, the legal guardian, parents, and spouse, or, if none be known, his nearest known relative or friend shall be immediately notified of such transfer. Any patient transferred as herein provided shall be deemed to be in the custody of such agency to the same extent and subject to the same limitations as if he had been ordered to be placed in its custody under section 64-7-37,

**64-7-48. Restrictions and Limitations — Civil Rights of Patients.**

(a) Subject to the general rules and regulations of the hospital and except to the extent that the superintendent of the Utah State Hospital determines that it is necessary for the medical welfare of the patient to impose restriction, every patient shall be entitled

(1) To communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the hospital;

(2) To receive visitors; and  
(3) To exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote unless he has been adjudicated incompetent and has not been restored to legal capacity.

(b) Notwithstanding any limitations authorized under this section on the right of communication, every patient shall be entitled to communicate by sealed mail with the department of public welfare and with the court, if any, which ordered his hospitalization. In no case shall the superintendent deny a patient a visit with a friend, relative, spouse, guardian of the individual, health or public welfare, or peace officer, or his legal counsel or clergy of the patient's choice.

(c) Any limitations imposed by the superintendent of the Utah State Hospital on the exercise of these rights by the patient and the reasons for such limitations shall be made a part of the clinical record of the patient.

Approved March 22, 1963.

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## CHAPTER 160

S. B. No. 215.

(Passed March 14, 1963. In effect May 14, 1963.)

### PROTECTING THE MENTALLY ILL

**An Act Amending Section 64-7-36, Utah Code Annotated 1953, as Amended by Chapter 124, Laws of Utah 1953, Relating to Hospitalization in the State Hospital; Providing Protection for the Mentally Ill, the Mentally Deficient, and Other Persons Coming Under This Act in Protecting Civil Rights when There is no Emergency Commitment Required.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 64-7-36, Utah Code Annotated 1953, as amended by Chapter 124, Laws of Utah 1953, is amended to read:

#### **64-7-36. Involuntary Hospitalization — Examination of Patient — Appointment and Duties of Special Commissioner — Compensation of Examiner in Case of Patient's Refusal to Submit to Examination.**

A. Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the district court of the county in which the proposed patient resides or is found, by a friend, relative, spouse or guardian of the individual, or by a licensed physician, a health or public welfare or peace officer, or the head of any public or private institution in which such individual may be. Any such application shall be accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that he is mentally ill and should be hospitalized, or a written statement by the applicant that the individual has refused to submit to examination by a licensed physician.

B. Upon receipt of an application the court shall give notice thereof

to the proposed patient, to his legal guardian, if any, and to his spouse, parents, and nearest known other relative or friend. If, however, the court has reason to believe that notice would be likely to be injurious to the proposed patient, notice to him may be omitted.

C. As soon as practicable after notice of the commencement of proceedings is given or it is determined that notice should be omitted, the court shall appoint two designated examiners to examine the proposed patient and report to the court their findings as to the mental condition of the proposed patient and his need for custody, care, or treatment in a mental hospital.

D. If the application avers that the proposed patient is in such mental condition that he is in immediate danger of destroying property, or injuring himself or others, or if the proposed patient refuses to submit to examination after such submission has been ordered by the court as provided by subsection E of this section, the court shall issue an order directed to any health or peace officer of the country to bring the proposed patient forthwith before the court, or, if the court is not then in session, to retain him in custody at the Utah State Hospital, or at any public or private hospital which will receive him, or in the proposed patient's home, until the earliest date at which he may be brought before the court issuing such order.

E. The examination shall be held at a hospital or other medical facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on his health. A proposed patient to whom notice of the commencement of proceedings has been omitted shall not be required to submit to an examination against his will, and on the report of the designated examiners of refusal to submit to an examination the court shall give notice to the proposed patient as provided under paragraph B of this section and order him to submit to such examination.

F. If the report of the designated examiners is to the effect that the proposed patient is not mentally ill, the court may without taking any further action terminate the proceedings and dismiss the application; otherwise, it shall forthwith fix a date for a hearing to be held not less than five nor more than fifteen days from receipt of the report.

G. The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be offered an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses, and the court may in its discretion receive the testimony of any other person. The proposed patient shall not be required to be present, and the court is authorized to exclude all persons not necessary for the conduct of the proceedings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered and the rules of evidence shall not apply. An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel the court shall appoint counsel.

H. If, upon completion of the hearing and consideration of the record, the court finds that the proposed patient

(1) Is mentally ill, and  
 (2) Because of his illness there is an immediate danger that the proposed patient will injure himself or others if allowed to remain at liberty, or

(3) Is in need of custody, care or treatment in a mental hospital and, because of his illness, lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization, it shall order his hospitalization for an indeterminate period or for a temporary observational period not exceeding six months; otherwise, it shall dismiss the proceedings. If the order is for a temporary period the court may at any time prior to the expiration of such period, on the basis of report by the superintendent of the Utah state hospital and such further inquiry as it may deem appropriate, order indeterminate hospitalization of the patient or dismissal of the proceedings.

I. The order of hospitalization shall state whether the individual shall be detained for an indeterminate or for a temporary period and if for a temporary period, then for how long. Unless otherwise directed by the court, it shall be the responsibility of the department of public welfare to assure the carrying out of the order within such period as the court shall specify.

J. The court is authorized to appoint a special commissioner to assist in the conduct of hospitalization proceedings. In any case in which the court refers an application to the commissioner, the commissioner shall promptly cause the proposed patient to be examined and on the basis thereof shall either recommend dismissal of the application or hold a hearing as provided in this section and make recommendations to the court regarding the hospitalization of the proposed patient.

K. In the event that the designated examiners are unable, because of refusal of a proposed patient to submit to an examination, to complete such examination upon the first attempt to conduct the same, the court shall fix a reasonable compensation to be paid to such designated examiners for services in the cause.

Approved March 21, 1963.

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## STATE LANDS

### CHAPTER 161

H. B. No. 33.

(Passed March 14, 1963. In effect May 14, 1963.)

#### GREAT SALT LAKE AUTHORITY

**An Act Relating to the Development of All of the Mainland, Islands, Minerals and Water Within the Great Salt Lake Meander Line Established by the United States Surveyor General; Providing for the Creation of the Great Salt Lake Authority to Formulate and Execute a Program for Such Development and Appropriating \$200,000 From the General Fund to the Great Salt Lake Authority.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Great Salt Lake Authority Established.**

There is established a Great Salt Lake Authority (hereinafter to be

known as the Authority) to be comprised of five persons, no more than three of whom shall be of the same political party, appointed by the governor, by and with the consent of the senate, who shall be selected because of their understanding of and demonstrated interest in the development of the Great Salt Lake and its environs. At least three members shall be residents of the counties bordering on the Great Salt Lake. Two of the five members shall be appointed for terms beginning on the effective date of this act, and ending April 1, 1965, and three of the five members shall be appointed for terms beginning on the effective date of this act, and ending April 1, 1967, in order that terms may be thereafter staggered. All subsequent appointments shall be for terms of four years. Vacancies occurring shall be filled by the governor for the unexpired term.

#### **Section 2. Members — Reimbursed.**

Members are not entitled to compensation, but they may be reimbursed for expenses incurred in the performance of their duties.

#### **Section 3. Advisory Council.**

The heads of the following departments and agencies, or their respective designated representatives, shall constitute an advisory council to the Authority: state engineer, tourist and publicity council, state parks and recreation commission, fish and game commission, state land board, state road commission, state water and power board; and said departments and agencies are to render such assistance and cooperation as will carry out the intent of this act.

#### **Section 4. Authority to Determine Policies and Programs.**

The Authority shall have power to determine the policies and develop the program best designated to accomplish the objectives and purposes set out in this act; to make and enforce rules and regulations for the governing of its own employees, and for the protection, care, development, and use of the areas administered by it.

#### **Section 5. Meetings — Chairman — Quorum.**

At the first meeting of the Authority and annually thereafter the Authority shall elect one of its members as chairman, who shall hold office for a term of one year and until his successor is elected. If a vacancy occurs in the office of chairman, the Authority shall appoint another of its members to fill such vacancy for the remainder of the term. Three members of the Authority shall constitute a quorum.

#### **Section 6. Powers of Authority — Coordination with Departments.**

The Authority shall have power to construct facilities and to acquire real and personal property in the name of the Authority by all legal and proper means, including purchases, gifts, devise, eminent domain, lease, exchange or otherwise. In acquiring any real or personal property, the credit of the state shall not be pledged without the consent of the legislature.

The Authority shall have power to protect property controlled or

administered by it. The officers and administrators of the Authority, and such other persons as the Authority may designate, shall have the same power and shall follow the same procedure in making arrests and the handling of the prisoners and in the general enforcement of this act as other peace officers.

The state department of fish and game shall retain the power and jurisdiction conferred upon it within the boundaries of jurisdiction of the Authority with reference to fish and game, subject to such reasonable rules and regulations as the Authority may make to insure the accomplishment of the objectives and purposes of this act.

The state land board shall retain authority conferred upon it to manage state lands under Title 65, Utah Code Annotated 1953, subject to such reasonable rules and regulations as the Authority may make to insure the accomplishment of the objectives and purposes of this act.

The Authority shall coordinate multiple use of property for such purposes as grazing, fish and game, mining and mineral removal, development and utilization of water and other natural resources, industrial, and other uses in addition to recreational development, and adopt such reasonable rules and regulations as the Authority may deem advisable to insure the accomplishment of the objectives and purposes of this act.

Acceptance of gifts and devices of land or other property shall be at the discretion of the Authority.

Acquisition of property by eminent domain shall be in the manner authorized by Chapter 34 of Title 78, Utah Code Annotated 1953. The Authority is empowered to lease or rent concessions of all lawful kinds and nature and property administered by it to persons, partnerships and corporations for a valuable consideration upon such terms and conditions as the Authority deems fit and proper.

The Authority shall not receive revenues which accrue to the state land board from mineral leases or mineral removal from state owned lands and waters within the Great Salt Lake Meander Line established by the United States Surveyor General. All other revenues, including such amounts as may be made available by the legislature, shall be reserved for use in the development and administration of the Great Salt Lake and its environs by the Authority.

The Authority is authorized and instructed to seek assistance from federal and local governments in planning and developing uses of the Great Salt Lake. All departments, agencies, officers and employees of the State of Utah are authorized and directed to give to the Authority such consultation and assistance as the Authority may reasonably request.

The Authority is authorized and instructed to proceed without delay to gather all studies, investigations and reports regarding the Great Salt Lake concerning the development of any part of Antelope Island for tourists and recreational uses. The Authority is authorized to take any steps that are necessary to secure such part of Antelope Island by donation, purchase agreement, lease, or other lawful means as deemed necessary for recreational use.



**Section 7. Planning — Acquisition — Development of Areas.**

The Authority shall have the responsibility for planning, acquisition, development, operation, protection and maintenance of any and all areas, resources or facilities under their jurisdiction. It is understood that the Authority will utilize staff and facilities which may be available from other state agencies and is also authorized to employ other help as necessary.

**Section 8. Road Commission to Construct Roads.**

Within the limitations of available funds the state road commission is authorized to construct a road from the town of Syracuse to the north end of Antelope Island along with the necessary roads on the island to serve the recreational development. These roads are to be located by the state road commission with approval of the Authority, and are to be programmed for design and construction upon the securing of Antelope Island property.

These roads shall be part of the state highway system and are to be maintained by the state.

**Section 9. \$200,000.00 Appropriated.**

There is appropriated from the general fund, from funds not otherwise appropriated, the sum of \$200,000.00 or so much thereof as may be necessary, to the Authority established in this act for the purposes described for the period ending June 30, 1965.

Approved March 22, 1963.

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**CHAPTER 162**

S. B. No. 171.

(Passed March 14, 1963. In effect May 14, 1963.)

**EXTENSION OF PERIOD OF LAND USE LEASES**

**An Act Allowing the State Land Board to Issue Special Use Leases, Other than Grazing, Mining, or Oil and Gas Leases, for Periods of Up to 49 Years.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Special Leases Up to 49 Years.**

The state land board shall have the power to issue surface leases on state lands for any period from one to forty-nine years, as the land board in its discretion deems in the best interests of the State of Utah; provided, however, that this power shall not apply to leases for grazing, mining, or oil and gas purposes, nor shall it restrict the right of the state land board to issue leases for such purposes.

Approved March 19, 1963.

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**CHAPTER 163**

S. B. No. 169.

(Passed March 14, 1963. In effect May 14, 1963.)

**PROCEEDINGS BEFORE THE UTAH STATE LAND BOARD**

**An Act Amending Section 65-1-9, Utah Code Annotated 1953, and Establishing a Period of Limitation Within Which Land Claimants Shall**

**be Required to Contest the Validity of any Action of the Land Board,  
Either Before the Board or in Court, Exclusive of Title Disputes.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 65-1-9, Utah Code Annotated 1953, is amended to read:

**65-1-9. Contests as to Preference Rights — Hearings — Findings.**

(1) Where contests arise as to the preference rights of claimants for lands under the control of the board, it shall have full power to hold a hearing thereon and to direct the taking of evidence concerning the questions involved, which hearing shall be reported in full. The board shall make findings of fact and conclusions of law, enter its order with respect thereto, and notify the parties to such hearing of its findings, conclusions and order.

(2) No claimant for lands under control of the board can appeal for judicial review of a decision of the board involving any sale, lease, or disposition of state lands, or any action relating thereto, unless such claimant files a written protest with respect thereto with the board within ninety days after the final decision of the board relating to such matter; or, with respect to decisions rendered prior to the effective date of this act, within ninety days after such effective date. This provision shall not relate to disputes between the board and any party as to the ownership or title to any lands.

Approved March 19, 1963.

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**CHAPTER 164**

S. B. No. 9.

(Passed March 12, 1963. In effect May 14, 1963.)

**BOY SCOUT LANDS**

**An Act Authorizing the State Land Board to Transfer to the Greater  
Salt Lake Council of Boy Scouts of America Certain State Lands Used  
as a Training Center for Boy Scouts.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Exchange and Lease of Lands.**

Notwithstanding the provisions of sections 65-1-24, and 65-1-29, Utah Code Annotated 1953, the state land board is hereby authorized and directed to exchange a part of section 36, township 2 north, range 10 east, Salt Lake Base and Meridian, to the Federal Government for a similar amount of ground, and to lease the remaining part of said section, and the land received in said exchange to the Great Salt Lake Council of the Boy Scouts of America, for a period of 99 years for such rental and on such terms as may be mutually agreed upon by said council and the state land board; provided, that said council shall designate the land in said section to be exchanged and the land to be received in exchange.

Approved March 16, 1963.

## CHAPTER 165

S. B. No. 61

(Passed February 11, 1963. In effect February 14, 1963.)

## STATE LAND WITHDRAWAL

**An Act Withdrawing Certain State Lands From Oil and Gas Leasing.***Be it enacted by the Legislature of the State of Utah:***Section 1. State Land Withdrawal.**

Subject to valid existing rights under any and all issued and outstanding oil and gas leases, all state lands as to which the mineral ownership is vested in the state of Utah, lying within the exterior boundaries of the following described area are hereby withdrawn from oil and gas leasing under the laws of the state of Utah for the purpose of the preservation and development of potash deposits therein belonging to the state of Utah:

## SALT LAKE MERIDIAN

Township 24 South, Range 20 East

Section 27:  $S\frac{1}{2}SW\frac{1}{4}$ Section 34:  $SW\frac{1}{4}NE\frac{1}{4}$ ,  $W\frac{1}{2}$ ,  $SE\frac{1}{4}$ 

Township 25 South, Range 20 East

Section 1:  $NW\frac{1}{4}SW\frac{1}{4}$ ,  $S\frac{1}{2}SW\frac{1}{4}$ Section 2: Lots 4 to 6, inclusive; Lots 10 to 16, inclusive;  $S\frac{1}{2}$ Section 3: Lots 1 to 16, inclusive;  $N\frac{1}{2}S\frac{1}{2}$ ,  $SE\frac{1}{4}SW\frac{1}{4}$ ,  $S\frac{1}{2}SE\frac{1}{4}$ Section 10:  $NE\frac{1}{4}$ ,  $NE\frac{1}{4}NW\frac{1}{4}$ ,  $NE\frac{1}{4}SE\frac{1}{4}$ 

Section 11: All

Section 12:  $W\frac{1}{2}NE\frac{1}{4}$ ,  $W\frac{1}{2}$ ,  $SE\frac{1}{4}$ 

Section 13: All

Section 14:  $NE\frac{1}{4}$ ,  $NE\frac{1}{4}NW\frac{1}{4}$ ,  $NE\frac{1}{4}SE\frac{1}{4}$ Section 24:  $NE\frac{1}{4}$ 

Township 25 South, Range 21 East

Section 7: Lot 4 ( $SW\frac{1}{4}SW\frac{1}{4}$ )Section 18: Lots 1 to 4, inclusive;  $SE\frac{1}{4}NW\frac{1}{4}$ ,  $E\frac{1}{2}SW\frac{1}{4}$ ,  $SW\frac{1}{4}SE\frac{1}{4}$ Section 19: Lots 1 to 3, inclusive;  $NE\frac{1}{4}$ ,  $E\frac{1}{2}NW\frac{1}{4}$ ,  $NE\frac{1}{4}SW\frac{1}{4}$ ,  $N\frac{1}{2}SE\frac{1}{4}$ **Section 2. Areas Subject to Withdrawal.**

Upon the relinquishment or other termination of any such issued and outstanding oil and gas lease or leases, the lands covered thereby which lie within the above described area shall automatically become subject to the withdrawal made by this act.

**Section 3. Effective Date.**

The State Land Board is hereby authorized and empowered to revoke this withdrawal at any time after the expiration of ten years from the effective date of this act or whenever United States Public Land Order No. 2379, F. R. Doc. 61-4568, filed May 17, 1961, has been revoked or terminated.

**Section 4. Emergency Clause.**

This act shall take affect upon approval.

Approved February 11, 1963.

**CHAPTER 166**

S. B. No. 168

(Passed March 14, 1963. In effect May 14, 1963.)

**REMOVAL OF LAND LEASE LIMITATIONS**

**An Act Amending Section 65-1-44, Utah Code Annotated 1953, as Amended by Chapters 131 and 132, Laws of Utah 1959, Providing for Dispensing with the 20-Year Limitation on Leases of State Lands, other than Leases on Grazing and Arid Lands and Lands Containing Mineral Interests or Deposits, and Removing the 640 Acre Limitation on Leases of Such Lands.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 65-1-44, Utah Code Annotated 1953, as amended by Chapter 131 and 132, Laws of Utah 1959, is amended to read:

**65-1-44. Leases of State Lands.**

(a) Unless otherwise provided by law, all state lands administered by the land board shall be subject to lease at the actual leasing value thereof and for such terms as fixed by the board, provided that grazing leases shall not be granted for terms exceeding twelve years nor in tracts exceeding 25,000 acres to any one person or corporation. When it shall be shown that a lease has been secured for the purpose of re-leasing, the board may declare such lease void. Application for lease shall be made to the board, and shall contain an affidavit that the applicant desires to lease for his own use and benefit. Applications for leases shall be accompanied by the fees provided by law. If the board deems it advisable to lease any land for purposes other than oil and gas, it shall cause the same to be appraised and determine the annual rental thereon, and shall thereupon notify the applicant thereof, and upon receipt of the first installment of rental, a lease of land applied for, duly executed, shall be delivered to the lessee. The first payment upon the lease shall be to the 1st day of January next ensuing. Subsequent payments shall be due and payable in advance, on the 1st day of January of each year. In leasing grazing lands, the board shall give preference to actual settlers and citizens. The board may withhold from sale or lease lands on which there are springs of water, where water for stock purposes is scarce and their sale or lease, if enclosed, would, in the opinion of the board, create a monopoly of large tracts of the United States or state grazing lands in favor of the purchase or lessee of lands on which such springs or streams are located.

Approved March 19, 1963.

**CHAPTER 167**

S. B. No. 172.

(Passed March 14, 1963. In effect May 14, 1963.)

**MINERAL LEASE AFTER OPTIONS**

**An Act Amending Section 65-1-45, Utah Code Annotated 1953, as Amended by Chapter 132, Laws of Utah 1959, Providing that the State Land Board May Issue Mineral Leases Other than Oil and Gas at Public Auction as Well as by Sealed Bids.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 65-1-45, Utah Code Annotated 1953, as amended by Chapter 132, Laws of Utah 1959, is amended to read:

**61-1-45. Lease When Several Applications Received — Procedure for Leasing Newly Acquired Lands and Lands Where Previous Lease Terminated.**

Except as otherwise provided by law, applications to lease shall be considered in the order filed; provided, that when simultaneous applications are filed the land board shall let the land to the applicant who will pay the highest rental therefor; and provided further, that applications to lease land already under lease, shall not be received before the day following the expiration of said lease, and all such applications received on such day shall be considered simultaneous.

In all cases where lands become available for leasing by the state because they are newly acquired or because a previous mineral lease is cancelled or otherwise terminated by the board, such lands shall be offered for mineral lease by the following procedure only:

(a) Within sixty days after such acquisition or termination, a notice of the lands having so become available for leasing shall be posted in the state land office. The notice shall describe the land, indicate what mineral interest in each tract is available for leasing and state the last date, which shall be fifteen days after the notice is posted, on which bids will be received.

(b) Except as provided in subsection (c), all applications for the lease of such lands filed before the closing date stated in the notice shall be considered to have been filed simultaneously. Such applications shall be submitted in sealed envelopes and shall be opened in the land office at ten o'clock on the morning of the first business day following the last day on which bids are receivable. The land board shall award leases to the highest responsible, qualified bidder in terms of the bonus paid in addition to the first year's rental who regularly submitted a bid in the manner required by this act. In all cases of identical bids of successful bidders, right to lease shall be determined by drawing. Drawings shall be participated in only by those among whom the right to lease is equal, but shall be accomplished publicly at the state land board office.

(c) At the discretion of the land board, leases for minerals other than oil and gas may be offered at public auction upon such terms, conditions, and minimum bid as may be prescribed by the board.

(d) Following the awarding of leases to successful bidders, all deposits except filing fees made by unsuccessful bidders shall be returned. Two copies of the lease shall be sent to each successful bidder, who will be required to execute them within thirty days from receipt thereof and file bond if required. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with applicable laws and regulations, his deposit will be forfeited and disposed of as other receipts under this act.

Approved March 19, 1963.

## CHAPTER 168

S. B. No. 54.

(Passed March 14, 1963. In effect May 14, 1963.)

## PURCHASE AND SALE OF LAND

**An Act Amending Sections 65-7-7, 65-7-9, 65-7-11 and 65-7-12, Utah Code Annotated 1953, as Enacted by Chapter 128, Laws of Utah 1955, Relating to the Purchase and Sale of Land Owned and Used by the Various Departments and Agencies of State Government; Providing that the Governor Shall Have the Final Authority for Approving the Sale or Purchase of Land.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Amended.**

Sections 65-7-7, 65-7-9, 65-7-11, and 65-7-12, Utah Code Annotated 1953, as enacted by Chapter 128, Laws of Utah 1955, are amended to read:

**65-7-7. Authorization for Agencies Not Enumerated in 65-7-6 to Acquire Land.**

Notwithstanding any other provision of law, all state agencies not enumerated in section 65-7-6 may apply to the governor through the director of finance for the purchase, lease, or other acquisition of land needed for public purposes. Upon a determination of the director of finance that the land is needed for public purposes and that the terms and conditions of the acquisition are for the best interest of the state, the governor may authorize the acquisition of land. The land board and director of finance, upon the request, shall assist the governor in such determination and in the negotiation and preparation of documents needed for the acquisition of land by such state agencies.

**65-7-9. Authorization to Sell, Lease or Dispose of Property — Approval of Governor.**

Except as provided in section 65-7-10, and notwithstanding any other provision of law, all state agencies are authorized to sell, lease, or otherwise dispose of land no longer needed for public purposes, provided, that all state agencies except the land board and road commission must secure the approval of the governor through the director of finance before making any sale, lease, or other disposition of land. Upon a determination by the director of finance that the land is no longer needed for public purposes, the governor may authorize the disposition of the land at public or private sale on such terms as he deems for the best interests of the state. The land board and the director of finance, upon request, shall assist the governor in such determination and in the negotiation and preparation of documents needed in the disposition of lands by state agencies. The proceeds from the sale, lease or other disposition of land shall go to the state agency using or holding the land unless the governor orders its deposit in the fund or funds from which the said state agency receives its appropriations.

**65-7-11. Director of Finance to Acquire or Dispose of Land.**

In the event of doubt as to the proper state agency to acquire land needed for public purposes or to dispose of land no longer needed for public purposes, the director of finance with the approval of the governor is hereby authorized to acquire or dispose of such land.

**65-7-12. Director of Finance to Certify Availability of Funds.**

Where state funds are used for the acquisition or disposition of lands, certification by the director of finance as to the availability of funds shall be required. Where legal documents are employed in the acquisition or disposition of land, approval of the form of such documents by the attorney general shall be required.

Approved March 19, 1963.

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## STATE OFFICERS AND EMPLOYEES

### CHAPTER 169

S. B. No. 53.

(Passed March 14, 1963. In effect May 14, 1963.)

#### BUDGETARY CONTROL OF MAINTENANCE OPERATIONS

**An Act Amending Section 67-2-5, Utah Code Annotated 1953, Relating to the Maintenance of the State Capitol and Other State Buildings; Providing that Expenditures Made for This Purpose be Approved by the Department of Finance in the Same Manner as Other Budgetary Expenditures of State Government.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 67-2-5, Utah Code Annotated 1953, is amended to read:

#### 67-2-5. Secretary of State is Superintendent of Capitol.

The secretary of state is the superintendent and has charge of the state capitol, and rooms or buildings hired for that purpose, and he must keep the same property therein in good order and repair. All expenditures made by the secretary of state in connection with the above shall be subject to budgetary control as may be exercised by the department of finance.

Approved March 20, 1963.

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### CHAPTER 170

S. B. No. 49.

(Passed March 14, 1963. In effect July 1, 1963.)

#### PREPARATION OF STATE WARRANTS

**An Act Amending Section 67-4-4, Utah Code Annotated 1953, Relating to the Preparation of State Warrants.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 67-4-4, Utah Code Annotated 1953, is amended to read:

**67-4-4. Preparation, Issuance and Drawing of Warrants — Return of Redeemed Warrants.**

Wherever provision is made by any existing law that any warrant or warrants upon the state treasurer, shall be prepared, issued or drawn by the state auditor, from and after the effective date of this act, such provision shall be construed to mean that any such warrant or warrants shall be prepared, issued or drawn by the department of finance. The state treasurer shall return the redeemed warrants to the state's accounting officer for purposes of reconciliation, post-audit and verification of the state treasurer's fund balances. The state's chief accountant shall thereafter return all redeemed warrants to the state auditor for filing and post-auditing.

**Section 2. Effective Date.**

This act shall take effect upon July 1, 1963.

Approved March 20, 1963.

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**CHAPTER 171**

S. B. No. 50.

(Passed March 14, 1963. In effect May 14, 1963.)

**DISTRICT ATTORNEYS' CLERKS' SALARIES**

**An Act Amending Section 67-7-6, Utah Code Annotated 1953, Relating to Salary of District Attorneys, Clerks; Providing that the Director of the Department of Finance Fix Salaries Paid by the State.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 67-7-6, Utah Code Annotated 1953, is amended to read:

**67-7-6. District Attorney's Clerk's Salary.**

The district attorney in judicial districts having a population of 75,000 inhabitants or more may employ clerks at such salaries as may be fixed by the director of the department of finance, to be paid monthly or semi-monthly by the state.

Approved March 19, 1963.

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**CHAPTER 172**

S. B. No. 141.

(Passed March 14, 1963. In effect May 14, 1963.)

**DEPUTY DISTRICT ATTORNEYS SALARIES**

**An Act Amending Section 67-7-14, Utah Code Annotated 1953, as Amended by Chapter 162, Laws of Utah 1961, Relating to Salaries of Deputy District Attorneys.**

*Be it enacted by the Legislature of the State of Utah:*



**Section 1. Section Amended.**

Section 67-7-14, Utah Code Annotated 1953, as amended by Chapter 162, Laws of Utah 1961, is amended to read:

**67-7-14. Salaries of Deputy District Attorneys.**

The salaries of the deputy district attorneys shall be fixed in accordance with salary schedules for state employees.

Approved March 19, 1963.

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**CHAPTER 173**

S. B. No. 139.

(Passed March 14, 1963. In effect May 14, 1963.)

**STATE SALARY ACT**

**An Act Relating to Salaries of State Officers; Providing for Groupings of Officials for Salary Purposes; Establishing Salary Classifications and Policies; and Repealing Sections 67-8-1, Utah Code Annotated 1953, as Amended by Chapter 126, Laws of Utah 1953, Chapter 146, Laws of Utah 1957, and Chapter 163, Laws of Utah 1961, 67-8-3, Utah Code Annotated 1953, as Amended by Chapter 126, Laws of Utah 1953, Chapter 137, Laws of Utah 1955, Chapter 148, Laws of Utah 1957, and Chapter 165, Laws of Utah 1961, 67-8-5, Utah Code Annotated 1953, as Amended by Chapter 126, Laws of Utah 1953, Chapter 139, Laws of Utah 1955, Chapter 150, Laws of Utah 1957, and Chapter 166, Laws of Utah 1961, and 67-8-9, Utah Code Annotated 1953, as Amended by Chapter 126, Laws of Utah 1953, Chapter 140, Laws of Utah 1955, Chapter 152, Laws of Utah 1957, and Chapter 167, Laws of Utah 1961.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. State Salary Act.**

This act shall be known and may be cited as the "State Salary Act."

**Section 2. Governor's Salary — Highest Official.**

The governor shall receive the highest salary of any state official listed in the scheduled groups outlined in Section 3 of this act. Salaries of the other state officers listed in such section shall be fixed at an amount less than the governor's salary and shall be grouped by classification for salary purposes. Any action taken by governing boards or commissions in fixing salaries of professional personnel or executive officers shall be by at least a two-thirds vote of such boards or commissions and the action shall be made public.

**Section 3. Annual Salary Schedules.**

The annual salaries of state officers are fixed as follows:

Governor .....	\$15,000
<b>Group 1:</b>	
Chief Justice of the Supreme Court (100%) .....	\$14,200
Justices of the Supreme Court (95% to 97%) .....	\$13,700

Judges of the District Courts (83% to 85%) .....	\$11,800
District Attorney, First Judicial District (30% to 35%) .....	\$ 5,000
District Attorney, Second Judicial District (50% to 55%) .....	\$ 7,200
District Attorney, Third Judicial District (65% to 70%) .....	\$ 9,200
District Attorney, Fourth Judicial District (50% to 55%) .....	\$ 7,200
District Attorney, Fifth Judicial District (30% to 35%) .....	\$ 5,000
District Attorney, Sixth Judicial District (30% to 35%) .....	\$ 5,000
District Attorney, Seventh Judicial District (30% to 35%) .....	\$ 5,000

**Group 2.**

Attorney General (100%) .....	\$12,000
Secretary of State (90% to 95%) .....	\$11,000
State Auditor (82% to 85%) .....	\$10,000
State Treasurer (82% to 85%) .....	\$10,000

**Group 3.**

Chairman and one member of the State Tax Commission (100%) .....	\$12,000
Chairman of the Industrial Commission (80% to 90%) .....	\$ 9,600
Chairman of the Commission of Finance (80% to 90%) .....	\$ 9,600
Chairman of the Public Welfare Commission (80% to 90%) .....	\$ 9,600
Chairman of the Business Regulations Commission (80% to 90%) .....	\$ 9,600
Chairman of the Liquor Control Commission (80% to 90%) .....	\$ 9,600
Chairman of the State Board of Agriculture (80% to 90%) .....	\$ 9,600
State Bank Commissioner (80% to 90%) .....	\$ 9,600
Commissioner of Public Safety (80% to 90%) .....	\$ 9,600
Commissioner of Insurance (80% to 90%) .....	\$ 9,600
Members of the State Tax Commission (72% to 80%) .....	\$ 8,600
Members of the Industrial Commission (72% to 80%) .....	\$ 8,600
Members of the Finance Commission (72% to 80%) .....	\$ 8,600
Members of the Public Welfare Commission (72% to 80%) .....	\$ 8,600
Members of the Business Regulations Commission (72% to 80%) .....	\$ 8,600
Members of the Liquor Control Commission (72% to 80%) .....	\$ 8,600
Members of the State Board of Agriculture (72% to 80%) .....	\$ 8,600

The chairman of the commission or board shall be the executive head of the department.

**Group 4:**

The State Engineer (100%) .....	\$12,500
The Adjutant General (80% to 85%) .....	\$10,000

**Section 4. Sections Repealed.**

Sections 67-8-1, Utah Code Annotated 1953, as amended by Chapter 126, Laws of Utah 1953, Chapter 146, Laws of Utah 1957, and Chapter 163, Laws of Utah 1961, 67-8-3, Utah Code Annotated 1953, as amended by Chapter 126, Laws of Utah 1953, Chapter 137, Laws of Utah 1955, Chapter 148, Laws of Utah 1957, and Chapter 165, Laws of Utah 1961, 67-8-5, Utah Code Annotated 1953, as amended by Chapter 126, Laws of Utah 1953, Chapter 139, Laws of Utah 1955, Chapter 150, Laws of Utah

1957, and Chapter 166, Laws of Utah 1961, and 67-8-9, Utah Code Annotated 1953, as amended by Chapter 126, Laws of Utah 1953, Chapter 140, Laws of Utah 1955, Chapter 152, Laws of Utah 1957, and Chapter 167, Laws of Utah 1961, are hereby repealed.

Approved March 19, 1963.

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## CHAPTER 174

S. B. No. 140.

(Passed March 14, 1963. In effect May 14, 1963.)

### SUPREME COURT CLERK SALARY

**An Act Amending Section 67-8-2, Utah Code Annotated 1953, as Amended by Chapter 126, Laws of Utah 1953, Chapter 147, Laws of Utah 1957, and Chapter 164, Laws of Utah 1961, Relating to Salaries of the Clerk and Employees of the Supreme Court.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 67-8-2, Utah Code Annotated 1953, as amended by Chapter 126, Laws of Utah 1953, Chapter 147, Laws of Utah 1957, and Chapter 164, Laws of Utah 1961, is amended to read:

#### 67-8-2. Salaries of Employees of Supreme Court.

The salaries of the following state officers shall be fixed in accordance with salary schedules for state employees: clerk of the Supreme Court, ex officio librarian, assistant librarian, state law library, and reporter of the decisions of the Supreme Court.

Approved March 19, 1963.

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## CHAPTER 175

S. B. No. 143.

(Passed March 14, 1963. In effect May 14, 1963.)

### DISTRICT JUDGES SALARY

**An Act Amending Section 67-8-4, Utah Code Annotated 1953, as Amended by Chapter 126, Laws of Utah 1953, Chapter 137, Laws of Utah 1955, Chapter 148, Laws of Utah 1957, and Chapter 165, Laws of Utah 1961, Relating to District Judges Term of Office, Salary and Mileage Expenses.**

*Bc it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 67-8-4, Utah Code Annotated 1953, as amended by Chapter 126, Laws of Utah 1953, Chapter 137, Laws of Utah 1955, Chapter 148, Laws of Utah 1957, and Chapter 165, Laws of Utah 1961, is amended to read:

**67-8-4. District Judges — Term of Office — Salary — Mileage and Expenses.**

The term of office of the judges of district courts shall be six years, and the annual salary of each judge shall be fixed by the legislature. No mileage or expense shall be allowed, except that whenever any district judge shall hold court in a county outside of the county in which he resides, he shall be entitled to his actual and necessary expenses incurred thereby.

Approved March 19, 1963.

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**CHAPTER 176**

S. B. No. 145.

(Passed March 14, 1963. In effect May 14, 1963.)

**STATE ENGINEER SALARY**

**An Act Amending Section 73-2-3, Utah Code Annotated 1953, as Amended by Chapter 157, Laws of Utah 1957, Relating to the Salary of the State Engineer.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 73-2-3, Utah Code Annotated 1953, as amended by Chapter 157, Laws of Utah 1957, is amended to read:

**73-2-3. Salary and Expenses.**

The salary of the state engineer shall be fixed by the legislature. When the state engineer is away from his office on official business he shall be entitled to his actual traveling expenses.

Approved March 18, 1963.

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**WATER AND IRRIGATION****CHAPTER 177**

S. B. No. 214.

(Passed March 14, 1963. In effect May 14, 1963.)

**COLUMBIA INTERSTATE COMPACT — RATIFYING**

**An Act Ratifying the Columbia Interstate Compact Entered Into at Portland, Oregon, on October 8th, 1962, by Those States of the Columbia River Basin, Namely Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming by the Representatives of Those States with the Approval of the Representatives of the United States of America.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Compact Ratified.**

The Columbia Interstate Compact entered into at Portland, Oregon, on the 8th day of October, 1962, by the Columbia River Basin states, name-

ly Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, by the representatives of those states with the approval of the representative of the United States of America is unconditionally ratified, approved and confirmed for and by the state of Utah.

## Section 2. Text of Compact.

The text of said compact is as follows:

### ARTICLE I — PURPOSES

The purposes of this compact with respect to the land and water resources of the Columbia River Basin are:

A. To facilitate and promote their orderly, integrated and comprehensive development, use, conservation and control for various purposes.

B. To further intergovernmental cooperation and comity with respect to those resources and the programs for their use and development by, among other things,

(1) Providing for the relationship between certain beneficial uses of water as a practicable means of effecting an equitable apportionment thereof, and for means of facilitating and effecting additional interstate agreements with respect thereto, and

(2) Providing an interstate body to consider the various common problems with respect to the use and development of these resources and to plan for, review and recommend plans for their development.

### ARTICLE 11 — DEFINITION OF TERMS

As used in this compact:

A. "Columbia River System" means the Columbia River and its tributaries within the United States.

B. "Columbia River Basin" means all the drainage area of the Columbia River System within the United States.

C. "State" or "member state" means a state which has ratified and is a party to this compact.

D. "Upstream state" means any of the states of Idaho, Montana, Nevada, Utah or Wyoming.

E. "Downstream state" means either of the states of Oregon or Washington.

F. "Upstream area" means all the area of the states Idaho, Montana, Nevada, Utah and Wyoming situated within the Columbia River Basin, and all those portions of the states of Oregon and Washington situated within the Columbia River Basin, lying east of the summit of the Cascade mountains.

G. "Beneficial consumptive use" means any use of waters, recognized as a beneficial use under the law of the member state involved, resulting in a substantial amount of the water diverted being consumed or so used as not to return to the Columbia River System. Such uses include those for domestic, livestock and municipal purposes, irrigation of land and such industrial and other beneficial uses as involve consumptive use of the water diverted.

H. "Nonconsumptive use" means any control or use of water in which, exclusive of seepage and evaporation of water incidental to its control or use, the water remains in or returns to the Columbia River System substantially undiminished in volume. Such uses include use for navigation, flood control, production of hydroelectric power, the maintenance of stream flows for pollution control, fish and wildlife and recreational purposes and such industrial and other beneficial uses as result in nonconsumptive use of water involved.

I. "Government" means, severally, the member states and the United States.

J. "Commission" means the Columbia Compact Commission as authorized by this compact.

### ARTICLE III—THE COLUMBIA COMPACT COMMISSION

A. There is hereby created an agency of the member states, and of each of them, to be known as the Columbia Compact Commission. The commission shall be composed of three commissioners from each of the states of Idaho, Montana, Oregon, Washington, and, if they ratify the compact, two commissioners from Wyoming and one each from Nevada and Utah. The commissioners of the respective states shall be designated or appointed in accordance with the laws of the state which they represent and shall serve and be subject to removal in accordance with those laws. A commissioner shall be named to represent the United States, to be designated and to serve as provided by the laws of the United States.

B. Each commissioner of a state shall be entitled to one vote in the commission. The commissioner of the United States shall serve as chairman of the Commission but shall have no vote. In the absence of any commissioner, his vote may be cast by another commissioner of his state or by another representative designated or appointed in accordance with the laws of that state if such other commissioner or representative shall have a written proxy in such form as may be established by rule of the commission.

C. The requirements as to a quorum for the transaction of business at any meeting of the commission shall be as follows:

(1) Commencing with the date the compact becomes effective as to all seven states named in subdivision A of this article, the presence in person of twelve or more commissioners shall constitute a quorum for the transaction of business; such a quorum shall include at least two commissioners, in person from such of the states of Idaho, Montana, Oregon and Washington as have appointed or designated commissioners. For the duration of any called meeting of the commission the presence of a quorum shall be determined at the commencement of such meeting.

(2) If any duly called meeting is recessed because of a lack of a quorum initially, a reconvened meeting may be set by written notice,

given in accordance with the by-laws, to all commissioners not less than ten days in advance of such reconvened meeting. At such reconvened meeting, the requirements for personal attendance by two commissioners from each of the states of Idaho, Montana, Oregon and Washington shall not apply, and the presence of twelve or more commissioners in person or by proxy shall constitute a quorum.

(3) Commencing with the date the compact becomes effective, but before all seven states have ratified, the requirements as to a quorum shall be modified as follows:

(a) If only four or five states have ratified, the phrase "nine or more" shall be substituted for the phrase "twelve or more" in subsections (1) and (2) of this section C.

(b) If only six states have ratified, the phrase "ten or more" shall be substituted for the phrase "twelve or more" in subsections (1) and (2) of this section C.

D. The requirements as to votes required to carry an action at any meeting of the commission shall be as follows:

(1) Commencing with the date the compact becomes effective as to all seven states named in section A of this article, any action by the commission shall be effective only if it be carried by a vote of twelve or more of the voting membership of the commission.

(2) Commencing with the date the compact becomes effective but before all seven states have ratified, the requirements as to votes necessary for commission action shall be modified as follows:

(a) If only four or five states have ratified, the phrase "nine or more" shall be substituted for the phrase "twelve or more" in subsection (1) of this section D.

(b) If only six states have ratified, the phrase "ten or more" shall be substituted for the phrase "twelve or more" in subsection (1) of this section D.

E. The commission shall meet to establish its formal organization within ninety (90) days of the effective date of this compact, such meeting to be at the call of the chairman or by a majority of the commissioners then appointed or designated. The commission shall then adopt its initial set of by-laws providing for, among other things: the adoption of a seal, the management of its internal affairs and the authority and duties of its officers. The commission shall also then elect from among its members a vice-chairman and treasurer to serve for the the first full or part annual term, these officers to be filled thereafter from among commission members by annual elections. The commission shall appoint an executive director, who shall also act as secretary, to serve at the pleasure of the commission and at such compensation and under such terms and conditions as it may fix. The executive director shall be the custodian of the records of the commission with authority to affix the commission's official seal and to attest to and certify such records or copies thereof.

F. The executive director, subject to the approval of the commission in such cases as its by-laws may provide, shall, without regard to

the provisions of the civil service laws of any member state or of the United States, appoint and remove or discharge such engineering, legal, expert, clerical and other personnel as may be necessary for the performance of the commission's functions, fix their compensation and define their duties, and require bonds of such of them as the commission may designate.

G. The commission may:

(1) Borrow, accept, or contract for the services of personnel from any government, agency thereof or any intergovernmental agency.

(2) Acquire by purchase or otherwise, hold and dispose of such real and personal property as may be necessary or convenient in the performance of its functions.

(3) Establish and maintain one or more offices for the transaction of its business.

H. The commission and its executive director shall make available to the member states or the United States any information in its possession at any time and shall provide free access to its records during established office hours to duly authorized representatives of member states or the United States or to any interested person.

I. The commission shall make and transmit annually to the legislative bodies and executive head of each government, a report covering the activities of the commission for the preceding year and embodying such plans, recommendations and findings as may have been adopted by the commission. The commission may issue such additional reports as it may deem desirable.

J. All meetings of the commission shall be open to the public.

#### ARTICLE IV—FINANCE

A. The compensation and expenses of each commissioner shall be fixed and paid by the government which he represents. All other expenses incurred by the commission in the course of exercising the powers conferred upon it by this compact shall be paid by the commission out of its own funds.

B. The commission shall submit to the executive head or designated officer of each member state for presentation to its legislature a budget of its estimated expenditures. This budget shall contain specific recommendations of the amount to be appropriated by each of the member states. The time of submission and the fiscal period of the commission's budget shall conform as nearly as possible to the requirements of the laws of the member states.

C. The commission shall, at the initial organizational meeting after this compact becomes effective, or as soon thereafter as is practicable, establish the initial fiscal period and shall establish the budget of expenditures for this initial period. The budget for the initial period, if it be a full biennium, shall be not less than \$65,000.00. If the initial fiscal period is only a portion of a biennium, the minimum budget therefor shall be the proportion of \$65,000.00 derived by applying thereto the ratio that the initial period bears to a full biennium. The respective shares of the budget for the initial fiscal period shall be as follows:



Member State	Percent of Budget
Idaho	23.5
Montana	23.5
Nevada	2.0
Oregon	23.5
Utah	2.0
Washington	23.5
Wyoming	2.0

If any of the states of Nevada, Utah or Wyoming fail to ratify during the initial period, the total budget for that period shall be reduced by the amount of the share of the state failing so to ratify, but the amounts to be paid by the other states shall remain unchanged.

D. Subsequent budgets shall be recommended by the commission and the amounts shall be allocated among the member states. The shares of Idaho, Montana, Oregon and Washington shall be equal and in no event shall the share of Wyoming exceed three per cent (3%), the share of Nevada exceed two per cent (2%) and the share of Utah exceed one per cent (1%) of the total budget for any fiscal period.

E. The commission shall not pledge the credit of any government except by and with the authority of the legislative body thereof given pursuant to and in keeping with the constitution of said government. The commission shall not incur any obligations prior to the availability of fund adequate to meet the same.

F. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be open for examination or audit by any member state but the commission shall not be required to adopt the auditing or accounting procedures of any particular state. All receipts and disbursements of funds handled by the commission shall be audited yearly by an independent certified public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

G. The accounts of the commission shall be open for public inspection during established office hours.

#### ARTICLE V—GENERAL POWERS

The commission shall have power when authorized by such majority vote as provided by article III hereof:

A. To collect, correlate and report on data relating to present and potential uses of water and other related resources of the Columbia River Basin and relating to available sources of water for use in the Columbia River Basin; conduct investigations and surveys to determine the extent of those resources and the nature of the problems involved in their present and future development and management; and recommend plans and programs for their development.

B. To undertake itself, or in cooperation with governments or agencies thereof or other entities, with respect to the Columbia River Basin the review of all plans for the construction of works authorized or re-

authorized to be undertaken after the effective date of this compact for flood control, navigation, power development, irrigation, or other water use or management which involve facilities having capacity for the diversion or use of flows of more than 200 cubic feet per second or the capacity to store at any time more than 25,000 acre-feet of water and which are proposed to be undertaken pursuant to laws of the United States, whether under permission granted by the United States, by means of financing in whole or in part by the United States, or otherwise.

C. To appear and make recommendations before appropriate governmental or intergovernmental agencies or other entities in public hearings or otherwise, in connection with any plans, projects or programs.

D. To collect, correlate and publish water facts necessary for the purpose of this compact directly or in cooperation with any governmental or intergovernmental agencies or other entities.

E. To cooperate with the International Joint Commission—United States and Canada, the appropriate agencies of Canada and the Province of British Columbia, as well as with agencies of the member states and the United States and with other entities, in studies, plans and recommendations with respect to any project which may have a substantial effect on the uses of waters of the Columbia River and its tributaries that are of international concern.

#### ARTICLE VI—COOPERATION IN POWER DEVELOPMENT

The best interests of the region will be served by the cooperation of the member states in securing the development and construction of power projects in sufficient number and with sufficient capacity to meet the present and future energy requirements of the region, but no recommendation shall be made by the commission with respect to power allocations except by unanimous affirmative vote of all member states, anything in article III notwithstanding; provided, however, that any member state shall have the right acting independently through its officers or agencies to secure in connection with any project located wholly or partly within such state, such protections and reservations of power as such state may consider necessary to safeguard its present or future interests or power requirements.

#### ARTICLE VII — APPORTIONMENT OF WATER AND RELATED MATTERS

A. So far as the states are concerned, all waters of the Columbia River System shall be available for appropriation for beneficial purposes under and to the extent permitted by the laws of the states involved, but, except for the provisions in this subdivision A relating to certain relationships between consumptive and nonconsumptive uses, no apportionment of waters or determination of rights to the use thereof is made by this compact.

So far as the states are concerned, rights to beneficial consumptive uses of water within the upstream area, whether established heretofore or hereafter under the laws of the states involved, shall be recognized

up to the average annual depletions shown in Plate 7 of the Report of the North Pacific Division, U.S. Army Engineers dated 1 June 1958, as against, and shall not be limited by, any rights, existing or future, to the quantity of such waters for nonconsumptive uses.

In the case of a stream situated wholly within a downstream state and tributary to the Snake River or to the Columbia River, however, the relationships as between nonconsumptive use rights appurtenant to a development located thereon and consumptive use rights as to the waters of such a tributary upstream from that development shall be governed by the laws of that state without regard to the foregoing limitations of this subdivision.

B. No waters of the Columbia River System shall be diverted out of the Columbia River Basin for use for any purpose except with the approval of all of the member states, but this provision shall not affect rights so to divert which are existing on the effective date of this compact.

C. The member states hereby designate, appoint and empower their commissioners to draft, negotiate and propose any and all compacts apportioning waters of any tributary stream forming part of the Columbia River System among or between the states through which said tributary stream flows, or amendments to this compact. Any such supplementary compacts or amendments to this compact negotiated as herein provided shall become effective upon approval by the commission, ratification by the legislatures of the member states party thereto, and consent thereto by the Congress.

D. All interstate compacts affecting the waters of the Columbia River System which are in effect as of the date of this compact becomes operative shall remain unaffected hereby.

E. In the event this compact is terminated, any right to the beneficial consumptive use of water which, prior to the date of termination, is required to be recognized under the provisions of this compact shall continue to be recognized after such termination to the extent herein provided. Unless otherwise expressly provided in a supplemental compact, made pursuant to the provisions of subdivision C of this article, no such right required to be recognized as of the effective date of such supplement shall be impaired by such supplemental compact.

#### ARTICLE VIII — POLLUTION CONTROL

A. The states and the United States recognize that the rapid increase of the population of the Columbia River Basin and the growth of industrial, mining, and related activities within that area can lead to such pollution of the waters of the Columbia River System as might constitute a menace to the health and welfare of the people. The states and the United States further recognize that maintenance and improvement of the quality of the waters of the Columbia River System require cooperative action and that pollution abatement and control are essential to the proper realization of the objectives of this compact and to the safe, profitable, and efficient multi-purpose use of the waters of said Columbia River System.

B. In addition to the powers enumerated in article V, it shall be the duty of the commission and the commission shall have power:

(1) To engage in such investigations, analyses or other appropriate means as are deemed necessary to obtain, coordinate, tabulate and summarize technical and other data on the pollution of the waters of the Columbia River System or any portion thereof and on the character and condition of such waters and the needs of the Columbia River Basin for improved water quality; and to prepare reports thereon at such times as may be deemed advisable by the commission.

(2) To cooperate with governments or agencies thereof or other entities for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of the waters of the Columbia River System or any portion thereof, and to make, revise and recommend to the governments water quality objectives necessary to protect the public health, public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial and other uses.

(3) To disseminate to the public, by any and all appropriate means, information respecting pollution abatement and control in the waters of the Columbia River System or any portion thereof and on the harmful and uneconomic results of such pollution.

C. Each state shall have the primary obligation and responsibility to take appropriate action under its own laws to abate and control interstate pollution, which is defined as the deterioration of the quality of the waters of the Columbia River Basin within the boundaries of such state which materially and adversely affects beneficial uses of waters of the Columbia River Basin in other states. Upon complaint to the commission by the state water pollution control agency of one state that interstate pollution originating in another state or states is not being prevented or abated, the procedure shall be as follows:

(1) The commission shall call a hearing, giving not less than 30 days notice in writing thereof to the water pollution control agencies of the states involved and to each person or entity which the commission finds is charged with causing such interstate pollution.

(2) Such hearing shall be held in accordance with rules and regulations prescribed by the commission.

(3) At the conclusion of such hearing, the commission shall make a finding as to whether interstate pollution exists, and if so, shall recommend to the appropriate agency that action be taken under State or Federal law to abate or correct such interstate pollution.

D. The water pollution control agencies of the member states shall from time to time, make available to the commission all data relating to the quality of waters of the Columbia River Basin which they possess as the result of studies, surveys and investigations thereof which they may have made.

#### ARTICLE IX — FISH AND WILDLIFE, AND RECREATION

A. In the exercise of the powers and functions conferred on the commission, it shall be the policy of the commission to prepare and review plans for development and application of measures for preventing damage to and enhancing the fish and wildlife and recreational resources of the Columbia River Basin and to cooperate with all agen-

cies charged with the responsibility for protecting and fostering these resources.

B. In the furtherance of this policy the commission shall:

(1) Submit pertinent information to, and receive recommendations from official agencies of the governments having jurisdiction or otherwise affected, with respect to projects and programs in which the commission may be concerned.

(2) Taking into consideration recommendations of governmental agencies responsible for fish and wildlife administration, recommend appropriate steps to assure that, in all projects which are within the purview of the commission, effective fish and wildlife protective facilities or compensatory measures as required by the laws of the member states, shall be incorporated into water use developments; that the costs thereof including operation and maintenance be included as a part of the cost of said projects; and that the responsibility for the provision of such effective fish and wildlife protective facilities or compensatory measures as are recommended as a part of the project plan shall continue beyond completion of construction of the individual projects. The fish and wildlife facilities and compensatory measures referred to in this article may include physical installations located elsewhere than at the actual site of the project.

(3) In connection with projects coming within the purview of the commission, give proper recognition to recreational and fish and wildlife values by recommending such steps as may be necessary and practicable — to protect or develop recreational resources; to assure the maintenance of necessary minimum stream flows, reliable and adequate pool levels, and allocation of water for fish and wildlife protective or compensatory facilities, and for the regulation of such stream flows and pool levels so as to conform to sound fish and wildlife management practices.

#### ARTICLE X — RULES AND REGULATIONS

The commission shall have the power to adopt and issue by-laws, rules and regulations to effectuate the purposes of this compact, as in its judgment may be appropriate. The commission shall publish its by-laws, rules and regulations in convenient form, but shall not be subject to the procedural requirements of any particular state.

#### ARTICLE XI — EXISTING RIGHTS RECOGNIZED

Nothing in this compact shall be deemed:

(1) To impair or affect any rights, powers or jurisdiction of the United States, or those acting by or under its authority, in, over and to the waters of the Columbia River Basin, except as otherwise provided by the Federal legislation required for the implementation of this compact.

(2) To affect the obligation of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

(3) To impair or affect the capacity of the United States, or those acting by or under its authority, to acquire in accordance with the laws

of the state involved rights in and to use of waters of the Columbia River Basin.

(4) To subject any property of the United States, its agencies or instrumentalities, to taxation by any member state or subdivision thereof.

(5) To subject any property of the United States, its agencies or instrumentalities, to the laws of any member state to any extent other than the extent those laws would apply without regard to this compact, except as otherwise provided by the Federal legislation required for the implementation of this compact.

(6) To affect the applicability of the laws of any member state with respect to water rights properly claimed thereunder, except to the extent that the applicability in a given case would be inconsistent with the provisions of this compact.

(7) To affect adversely the areas of Mount Ranier, Glacier, Yellowstone, or Grand Teton National Parks or Craters of the Moon, Fort Vancouver or Whitman National Monuments or to limit the operation of laws relating to the preservation thereof.

(8) To impair or affect marketing provisions for Federally generated power as the same may be now or hereafter established.

#### ARTICLE XII — TERMINATION

This compact shall remain in full force and effect unless and until terminated by action of the legislatures of the states of Idaho, Montana, Oregon and Washington which action is consented to and approved by the Congress of the United States; provided, that in the event of any termination all rights theretofore established hereunder or recognized hereby shall continue to be recognized as valid notwithstanding such termination.

#### ARTICLE XIII—SEVERABILITY

The provisions of this compact shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any government or the applicability thereof to any government or agency thereof or other entity or to any circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government or agency thereof or other entity or to any other circumstance shall not be affected thereby, unless it is authoritatively and finally determined judicially that the remaining provisions cannot operate for the purposes, or substantially in the manner, intended by the member states independently of the portions declared to be unconstitutional or invalid.

#### ARTICLE XIV — RATIFICATION AND EFFECTIVE DATE

A. This compact shall become effective and binding when it has been ratified by the legislatures of the states of Idaho, Montana, Oregon and Washington, and when consented to by an Act of Congress of the United States, which will, in substance, provide that the United

States, or any agency thereof, or any non-federal entity acting under any future license or other authority granted under the laws of the United States, in connection with water control or use projects located wholly or partly in a downstream state shall be governed by the following limitation:

Rights to beneficial consumptive uses within the upstream area, whether established heretofore or hereafter under applicable laws, shall be recognized as against any rights, existing or future, to such waters for nonconsumptive uses by projects located wholly or partly within a downstream state, to the extent that average annual depletions resulting from such upstream consumptive uses above any property or authorized structure of the United States, located wholly or partly in a downstream state, were assumed in Plate 10 of "Report of the Division Engineer" Volume I of House Document No. 531, 81st Congress, 2nd Session, and to the extent any additional depletions subsequently are recognized by the Congress as the basis of operation of existing projects, or as the basis for authorization of additional or revised projects.

B. If this compact becomes effective in accordance with the above provision, it shall also become effective and binding as to any of the states of Nevada, Utah, or Wyoming if ratified by the legislature of any such state.

In Witness Whereof the commissioners have signed ten counterparts hereof each of which shall be and constitute an original, one of which shall be deposited with the administrator of general services of the United States of America, one of which shall be forwarded to the governor of each of the signatory states, and two of which shall be made a part of the permanent records of the Columbia Interstate Compact Commission.

Done at the City of Portland, Oregon, this 8th day of October, 1962.

	(s) R. P. Parry
	(s) G. L. Crookham, Jr.
For the State of Idaho:	(s) Geo. N. Carter by Carl E. Tappan, Ass't.
	(s) Alex O. Coleman
	(s) Fred E. Buck
	(s) C. H. Raymond
	(s) Robert L. Neils
	(s) James E. Murphy
For the State of Montana:	(s) Lester A. Colby
	(s) Glenn H. Larson
	(s) W. A. Groff
	(s) Donovan Worden
	(s) John J. Mac Donald
	(s) Elmo J. DeRicco
For the State of Nevada:	(s) George B. Moseley
	(s) Eyer H. Bois

- For the State of Oregon:
- (1) Freeman Holmer
  - (S) George Layman
  - (s) Anthony Yturri
  - (s) Vern L. Hill
  - (s) John D. Hare
  - (s) Harry D. Boivin
  - (s) Al Flegel
  - (s) Warne Nunn
  - (s) Edward J. Whelan
  - (s) Sidney Leiken
- For the State of Utah:
- (s) Jay R. Bingham
  - (s) D. Elwood Caples
  - (s) William D. Shannon
- For the State of Washington:
- (s) H. Maurice Ahlquist
  - (s) John L. Cooney
  - (s) W. L. McCormick
  - (s) E. J. Van Camp
  - (s) Earl Lloyd
- For the State of Wyoming:
- (s) Clifford P. Hansen
  - (s) Ciril D. Cranney
  - (s) H. T. Person
  - (s) Norman B. Gray

I have participated in the negotiation of this compact. I intend to report favorably thereon to the Congress of the United States on the condition that the provisions of federal legislation giving the consent of Congress will meet the requirements of article XIV.

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Thomas R. Newell, Representative  
of the United States of America

### **Section 3. Compact Signed and Deposited.**

The compact ratified by this act is the original signed by the commissioners representing the states of Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming and approved by the representative of the United States of America and deposited in the archives of the Department of State of the United States of America and in the office of the secretary of the state of Utah.

### **Section 4. Member from Utah — Executive Director of Utah Water and Power Board.**

The member of the Columbia compact commission to represent the state of Utah shall be the executive director of the Utah water and power board.

### **Section 5. Savings Clause.**

Any errors, if any, in copying the original compact in section 2 hereof shall be held not to invalidate the ratification of the compact in any manner whatsoever.

### **Section 6. Effective Date.**

This act shall not take effect until said Columbia River interstate



compact has been ratified by the states of Idaho, Montana, Nevada, Oregon, Washington and Wyoming and until the Congress of the United States of America has consented thereto, but upon such ratification and such consent shall at once take effect.

Approved March 19, 1963.

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## CHAPTER 178

S. B. No. 93.

(Passed March 8, 1963. In effect May 14, 1963.)

### DEVELOPING A STATE WATER PLAN

**An Act Relating to the Development of a State Water Plan; Providing for the Appropriation of \$150,000 From the State General Fund for Beginning the Necessary Investigations, Surveys, Plans, Estimates and Reports Involved.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. \$150,000.00 Appropriated.**

There is hereby appropriated to the Utah Water and Power Board out of the State General Fund, the sum of \$150,000 for initiating and conducting water resource investigations, surveys and studies, preparing plans and estimates, making reports thereon, and performing necessary work required relative to developing an over-all state water plan under the provisions of the Utah Water and Power Board Act of 1947, and the amendments thereto contained in Chapter 4, Title 73, Utah Code Annotated 1953, as now in force or as may be hereafter amended. Of the amount hereby appropriated, not more than \$55,000 may be expended during the fiscal year of 1964, and not more than \$95,000 plus the unexpended balance, if any, of the money made available herein for expenditure during the preceding fiscal year, may be expended during the fiscal year 1965.

#### **Section 2. State Agencies to Cooperate.**

All other state agencies shall cooperate with the Utah Water and Power Board in the formulation of a state water plan and the Utah Water and Power Board is to use information, including water resource data, which has been or will be assembled by other state agencies, the United States Government, various colleges of the state, or any other source which can profitably contribute to the development of a state water plan.

#### **Section 3. Special Studies or Investigations.**

Special studies or investigations needed for development of a water plan which might be requested of other agencies, but not included in the budgets or the work programs of such agencies, may be paid for from funds hereby appropriated for the formulation of a state water plan.

#### **Section 4. Savings Clause.**

Nothing contained herein shall be construed to impair or otherwise interfere with the authority heretofore granted to other agencies, institutions or subdivisions of the State of Utah.

Approved March 11, 1963.

## CHAPTER 179

H. B. No. 43.

(Passed March 11, 1963. In effect May 14, 1963.)

## IRRIGATION DISTRICT FINANCING

**An Act Amending Sections 73-7-17, 73-7-20, 73-7-22, 73-7-23, and 73-7-24, Utah Code Annotated 1953, Relating to Irrigation Districts, Providing for the Creation and Maintenance of Sinking and Reserve Funds, and Certification of Required Amounts Therefor and for Water Payments, Operation and Maintenance, and Rental Payments, to the County Commissioners; Eliminating County Treasurers as Ex-Officio District Treasurers, Redefining Duties of County Treasurers, Designating the Secretary of the District to Serve as Treasurer of the District, Defining the Accounts to be Kept by the District and Method of Payment Therefrom, and Designating Authorized Depositories of District Funds; Providing for the Time and Occasion for Notice to be Given for Construction and Materials Acquisition, When Bonds Required and When not Required, Methods of Payment of Claims Against the District; and Providing for Deposit of Tolls, Charges and Assessments to the Credit of the District.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 73-7-17, Utah Code Annotated 1953, is amended to read:

**73-7-17. Director to Determine Amounts Required for Current Year — Certification of Amounts to Commissioner.**

It shall be the duty of the board of directors on or before July 1st of each year, to determine the amount of money required for the current year, to pay interest on and all maturing installments of principal of any bonds, and warrants, and all payments due or to become due to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in section 73-7-11 provided, and all operation and maintenance or rental payments to be made by the district to the United States under the provisions of any such contract between the United States and the district, and all water payments and all operation and maintenance or rental payments to be made by the district to other entities under the provisions of any contract between the district and other entities, and to meet the cost of any construction or reconstruction proposed to be covered by annual assessments, and all maintenance, operating and current expenses, including the payment of assessments upon stock of irrigation, canal, or reservoir companies owned by the district, and the amount necessary to meet the obligations of local improvement districts, and to establish, keep and maintain sinking funds sufficient to assure the prompt payment of principal of and interest on the bonds as principal and interest fall due, and reserve funds at the level required by any contract between the district and the United States, and other entities; and to establish, keep and maintain adequate reserve funds for depreciation, repairs, extensions and improvements to the works necessary to assure adequate

and efficient service, as determined by the board, and to certify to the county commissioners of the county in which the office of said district is located, said amounts together with such additional amounts as may be necessary to meet any deficiencies theretofore incurred, and if so provided in case of contract with the United States a further amount to cover any deficit in payments due the United States thereunder which may have resulted from delinquent assessments for any preceding year.

## **Section 2. Section Amended.**

Section 73-7-20, Utah Code Annotated 1953, is amended to read.

### **73-7-20. Duties of County Treasurer — Liability — Collections — Warrants and Coupons — Bond Fund — Improvement Account — Payments — Deposits.**

The county treasurer of each county in which is located any irrigation district, shall be liable upon his official bond and to indictment and criminal prosecution for malfeasance, or failure to perform any duty herein prescribed as county treasurer as is provided by law in other cases as county treasurer. Said treasurer shall collect, receive and receipt for all moneys belonging to said district arising through taxation. It shall be the duty of the county treasurer of each county in which any irrigation district is located in whole or in part to furnish each landowner under said district within said county with the valuation notice for general taxes, and a separate notice of the assessed valuation for district taxes, and of the day fixed by the board of equalization for hearing complaints, and to collect and receipt for all taxes levied as herein provided, but payment of district taxes may be received and receipted for separately from taxes upon real estate for county purposes; provided, however, that such county treasurer shall receive in payment of the general fund tax above mentioned for the year in which said taxes are levied, warrants drawn against said general fund the same as so much lawful money of the United States, if such warrant does not exceed the amount of the general fund tax which the person tendering the same owes; provided, further, that such county treasurer shall receive in payment of the district bond fund taxes above mentioned for the year in which said taxes were levied, interest coupons or bonds of said irrigation district maturing within the year the same as so much lawful money of the United States, if such interest coupons or bonds do not exceed the amount of district bond fund tax which the person tendering the same owns, and provided further that, except in case of contract obligation due to the United States as provided in section 73-7-16, any landowner may tender and the county treasurer shall receive money or bonds and/or coupons of the district equaling such landowner's proportion of the total issue of bonds of the district, with interest to maturity, based on the proportion of the landowner's water allotment to the total final water allotment of the district, and taxes for payment of the bonds or interest on the bonds of the district, shall not thereafter be levied against such landowner. The county treasurer of each county comprising a portion of the irrigation district, shall on the first Monday of each month remit to the district all moneys, warrants, coupon, or bonds theretofore collected or received by him on account of said district. Such funds so remitted shall be deposited to

the credit of the district by the secretary of the district. The secretary of the district shall serve also as treasurer of the district, unless a treasurer is otherwise provided by the board. The district shall keep a bond fund account, United States contract fund account, local improvement fund accounts, reserve fund account and a general fund account. The bond fund account shall consist of all moneys received on account of interest and principal of bonds issued by said district, said accounts for interest and principal shall be kept separate, and the United States contract fund account shall consist of all moneys received on account of any and all payments due or to become due the United States accompanying which bonds of the district have not been deposited with the United States as in section 73-7-11 provided. The local improvement fund accounts shall consist of moneys received on account of local improvements of local improvement district or districts respectively. The reserve fund account shall consist of funds required contractually to be kept and maintained and for depreciation, repairs, extensions and improvements as determined by the board. The general fund shall consist of all other moneys or general fund warrants received by the collection of taxes or otherwise. The district shall pay out of said bond fund, when due, the interest and principal of the bonds of said district, at the time and place specified in said bonds, and shall pay out of said United States contract fund when due all payments due to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in section 73-7-11 provided, and shall pay out of the local improvement fund accounts respectively, all obligations of local improvement districts as the same become due, and shall pay out of said reserve fund those amounts contractually to be paid therefrom and repairs, extensions and improvement charges for which the reserve funds were provided.

In cases where bonds have been deposited with the United States as provided in this act, the moneys to be paid to the United States for rentals or operation and maintenance charges if not secured by bonds shall be paid out of the general fund account; also all other construction, operation, and maintenance charges of the district for which no reserve funds exist. The district shall pay out of said general fund only upon the order of the board of directors of the district, signed by the president or other director authorized by the board and countersigned by the secretary of said district as herein provided. All such district taxes collected and paid to county treasurers as aforesaid shall be responsible for the safekeeping and remittance thereof to the district the same as for other moneys collected by them as such treasurers; provided, that county treasurers shall receive as sole compensation for the collection of such taxes, such amount as the board of directors may allow, which compensation shall be additional to the regular salary of such county treasurers as provided by law. The district is hereby authorized to deposit the district funds with any bank or trust company.

### **Section 3. Section Amended.**

Section 73-7-22, Utah Code Annotated 1953, is amended to read:  
**73-7-22. Construction — Notice — Awarding Contracts — Contractors Bonds.**

After adopting a plan for the construction of canals, reservoirs, and works, the board of directors shall give notice thereof by publication in the county in which the principal office of the district is located at least once nor less than ten days prior to the expiration of the period in which bids shall be received, and such other notice as they may deem advisable calling for bids for the furnishing of material or construction of said work or any portion thereof. If less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice shall set forth that plans and specifications, or specifications alone where there are no plans, may be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and the place for opening the proposals, which at said time and place shall be opened in public, and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, or award and order for materials, to the lowest responsible bidder, or it may reject any or all bids, and thereupon readvertise for proposals, or proceed to construct the work under its own superintendence. Contracts for the purchase of material shall be awarded to the lowest responsible bidder unless all bids are rejected or the board determines to readvertise for bids. The person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for not less than 25 per cent of the amount of the contract price and conditioned for the faithful performance of said contract, but no such bond need be required by the board where materials are contracted for and the customs of sales and purchases of such items are normally without bond requirement. The work shall be done under the direction and to the satisfaction of the engineer in charge, and be approved by the board, and shall be paid for out of the general fund account; provided, that the provisions of this section shall not apply in the case of any contract between the district and the United States. Nothing herein contained shall be construed to prohibit the district from purchasing material or doing any work required by it without advertising for bids and without the letting of a contract where the estimated cost of such work or such material does not exceed \$3,000, in cases of emergencies the board of directors may let contracts for the work required in the emergency without advertising for bids or may cause such work to be done by the district itself.

#### **Section 4. Section Amended.**

Section 73-7-23, Utah Code Annotated 1953, is amended to read:

#### **73-7-23. Claims — Manner of Payment — Registry of Warrants — Emergency Loan.**

No claims shall be paid by the district until the same shall have been allowed by the board, and then only upon warrants signed by the president, or other director authorized by the board, and countersigned by the secretary, which shall state the date authorized by the board and for what purpose; and if the district has not sufficient money on hand to pay such warrant when it is presented for payment, the secretary or treasurer of the district shall endorse thereon "Not paid for want

of funds; this warrant draws interest from date of presentation at 6 per cent per annum," and endorse thereon the date when so presented, over his signature, and from the time of such presentation until paid such warrant shall draw interest at the rate of 6 per cent per annum; provided, when there is more than the sum of \$100 in the hands of the district it shall be applied upon said warrant. All claims against the district shall be verified as required in the case of claims filed against counties in this state, and the secretary of the district is hereby authorized and empowered to administer oaths to the parties verifying said claims, as the county clerk or a notary public might do. The district shall keep a register in which shall be entered, each warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid in redemption thereof, and all warrants shall be paid in the order of their presentation for payment to the district. All warrants shall be drawn payable to the claimant or bearer in the same manner as county warrants. The district is also authorized to pay claims against the district by checks signed by the president, or other director authorized by the board, and countersigned by the secretary. To meet necessary expenses in anticipation of the collection of taxes, the board of directors may incur indebtedness by borrowing money or otherwise, not exceeding the taxes for the current year, and as evidence of such indebtedness may issue negotiable notes of the district, payable in not more than one year from date thereof. In case of a break in the reservoir or canal or other disaster, the board of directors is authorized to borrow money and make the necessary repairs.

#### **Section 5. Section Amended.**

Section 73-7-24, Utah Code Annotated 1953, is amended to read:

#### **73-7-24. Tolls — Charges, Assessments — Collection of Same.**

For the purpose of defraying the expenses of the organization of the district, and the construction, care, operation, management, repair and improvements of all canals, ditches, reservoirs and works, including salaries of officers and employees, or for the payment of charges to the United States for any of said purposes, or for rental of water, the board may either fix rates of tolls and charges and collect the same from all persons using said canal and water for irrigation, or other purposes, or in the case of such charges to be paid to the United States the same shall be collected from lands for which water service can be made, pursuant to contract with the United States, and in addition thereto may provide, in whole or in part, for the payment of such expenditures by levy of assessments therefor, as heretofore provided, or by both tolls and assessments, provided that if contract be made, with the United States the charges for operation and maintenance or rental, as the case may be, may be fixed in accordance with the federal laws, notice and rules, and the contract with the United States; provided, further, that in case the money raised by sale of bonds issued be insufficient, or in case bonds be unavailable for the completion of the plans by causing to be levied assessments for the completion in the same manner in which levy or assessments is made for the other purposes provided for in this act. All tolls and charges other than regular assessments levied by the board of county commissioners of the coun-

ties in which any portion of the district is situated shall be considered by the secretary of the district and shall be by him deposited to the credit of the district designating the funds to which such moneys shall be credited.

Approved March 15, 1963.

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## CHAPTER 180

S. B. No. 106.

(Passed March 14, 1963. In effect May 14, 1963.)

### METROPOLITAN WATER DISTRICTS

**An Act Amending Sections 73-8-2, 73-8-21, 73-8-27, 73-8-35, 73-8-36, 73-8-37, 73-8-39, 73-8-40 and 73-8-45, Utah Code Annotated 1953; Sections 73-8-18, 73-8-20 and 73-8-52, Utah Code Annotated 1953, as Amended by Chapter 159, Laws of Utah 1957, Relating to Metropolitan Water Districts; Providing for Organization and Operation Thereof, Including Defining of Words and Phrases, and the Number, Appointment, Qualifications, Tenure and Recall of Directors; Providing for Levying and Collection of Taxes; Enacting Sections 73-8-57, 73-8-58 and 73-8-59, Utah Code Annotated 1953; Providing that Expenditure of Tax Receipts May be Deferred; Authorizing Creation of Reserve Funds; Providing for a Savings Clause; and Repealing Sections 73-8-38, 73-8-43, 73-8-44, 73-8-46, 73-8-47 and 73-8-48, Utah Code Annotated 1953, Relating to Certain Rights of Cities.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Sections Amended.**

Sections 73-8-2, 73-8-21, 73-8-27, 73-8-35, 73-8-36, 73-8-37, 73-8-39, 73-8-40 and 73-8-45, Utah Code Annotated 1953, and Sections 73-8-18, 73-8-20 and 73-8-52, Utah Code Annotated 1953, as amended by Chapter 159, Laws of Utah 1957, are amended to read:

#### **73-8-2. Words and Phrases Defined.**

As used herein the term "municipality" or "city" shall be deemed to mean and include any incorporated city or town of the state of Utah.

The terms "board" and "board of directors" shall be deemed to refer to the board of directors created under section 73-8-20 hereof.

The term "governing body" as used herein shall be deemed to mean the legislative body of any municipality.

The term "public corporation" as used herein shall be deemed to mean and include the United States or any public agency thereof, this or any other state or any political district or subdivision thereof.

#### **73-8-18. Powers of Incorporated Districts.**

Any district incorporated as herein provided shall have power:

- (a) To have perpetual succession.
- (b) To sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction.
- (c) To adopt a corporate seal and alter it at pleasure.
- (d) To take by grant, purchase, bequest, devise or lease, and to

hold, enjoy, lease, sell, encumber, alienate or otherwise dispose of, water, water works, water rights and sources of water supply, and any and all real and personal property of any kind within or without the district and within and without the state necessary or convenient to the full exercise of its powers; also to acquire, construct or operate, control and use any and all works, facilities and means necessary or convenient to the exercise of its powers, both within and without the district and within and without the state, and to do and perform any and all things necessary or convenient to the full exercise of the powers herein granted.

(e) To have and exercise the power of eminent domain and in the manner provided by law for the condemnation of private property for public use to take any property necessary to the exercise of the powers herein granted. In any proceeding relative to the exercise of such power of eminent domain, the district shall have the same rights, powers and privileges as a municipal corporation.

(f) To construct and maintain works and establish and maintain facilities across or along the public street or highway and in, upon or over any vacant public lands which public lands are now, or may become, the property of the state of Utah, and to construct works and establish and maintain facilities across any stream of water or water-course; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. The grant of the right to use such vacant state lands shall be effective upon the filing by such district with the state land board of an application showing the boundaries, extent and locations of the lands, rights of way or easements desired for such purposes. If the land, rights of way or easement for which application shall be made is for the construction of any aqueduct, ditch, pipeline, conduit, tunnel or other works for the conveyance of water, or for roads, or for poles, or towers and wires for the conveyance of electrical energy or for telephonic or telegraphic communication, no compensation shall be charged the district therefor, unless, in the opinion of the state land board the construction of such works will render the remainder of the legal subdivision through which such works are to be constructed valueless or unsalable, in which event the district shall pay for the lands to be taken and for such portion of any legal subdivision which, in the opinion of said state land board, are rendered valueless or unsalable, at the rate of \$2.50 per acre. If the lands for which application is made are for purposes other than the construction of roads or works for the conveyance of water, or electricity or telephonic or telegraphic communications, such district shall pay to the state for such lands at the rate of \$2.50 per acre. Upon filing such application, accompanied by map or plat showing the location or proposed location of such works or facilities, the fee title to so much of such state lands as shall be necessary or convenient to enable such district efficiently and without interference to construct, maintain, and operate its works and to establish, maintain and operate its facilities, shall be conveyed to such district by potent; if an easement or right of way only over such lands be sought by such district, such easement or right of way shall be evidenced by permit or grant executed by or on behalf



of the state land board. The state land board may reserve in such patents, grants or permits, easements and rights of way in the public across any lands therein described for streets, roads and highways theretofore established according to law. Before any such patent, grant or permit shall be executed any compensation due to the state under the provisions hereof, must be paid. No fee shall be exacted from such district for any patent, permit or grant so issued or for any service rendered hereunder. In the use of streets the district shall be subject to the reasonable rules and regulations of the county or city wherein such streets lie, concerning excavations and the refilling of excavations, the relaying of pavements and the protection of the public during periods of construction; provided, that the district shall not be required to pay any license or permit fees, or file any bonds. The district may be required to pay reasonable inspection fees.

(g) To borrow money, incur indebtedness and to issue bonds and other obligations; provided, however, that no district hereunder shall issue bonds to the payment of which the full faith and credit of such district are pledged which in the aggregate shall exceed 10 per cent of 100 per cent of the reasonable fair, cash value of the taxable property therein as computed from the last equalized assessment roll for county purposes prior to the issuance of such bonds. Contracts and agreements with the United States of America, and with any water users' association or any other entity, public co-operative, or private, from which the district procures water, and bonds payable solely from revenues of the district other than the proceeds of ad valorem taxes, shall not come within the limitation of this paragraph.

(h) To fix and determine the funds required for district purposes of every nature and to apportion, and charge the same against the area of each city, within the district as follows:

(1) As to the costs of all water, water rights, reservoirs, canals, conduits and other works for which the district as a whole receives the benefit, and on account of which the district is indebted or on account of which the district has made payment without any previous apportionment and charge having been made, and the charges made against the district by reason of its ownership of stock in any water users' association, in the same proportion as the water and water rights set apart or allotted to each area shall bear to the total water and water rights owned or held by the district.

(2) As to that portion of said funds required for operation, maintenance and the cost of construction of distributing systems, the same shall be equitably apportioned and shall be determined and based on the benefits and the relative cost of service rendered by the district to each respective area.

(i) To levy and collect taxes for the purposes of carrying on the operations, and paying the obligations of the district; and to levy in any year a tax sufficient to cover in full any deficit that may have resulted from tax delinquencies for any preceding year; provided, however, that taxes levied under this section for administering the district and maintaining and operating its properties shall not exceed two and one-half mills on each dollar of the assessed valuation of taxable property in the district. Taxes levied to pay principal of and interest on

the bonds of the district, to pay indebtedness and interest therein owed to the United States of America, or to pay assessments or other amounts due any water users' association or other entity, public co-operative or private, from which the district procures water, shall not be subject to the foregoing limitation. Taxes levied for the payment of principal of and interest on the bonds of the district shall be levied for that specific purpose, the proceeds thereof shall be applied solely to the payment of such principal and interest, and such levies, being separate and special levies, shall not be subject to any priorities in favor of obligations of the district in existence at the time such bonds were issued. None of the taxes herein authorized shall be levied until a district shall first have conducted, at its regular place of business, a public hearing on the purposes and necessities of such taxation. Such public hearing shall be conducted by the board of directors of a district not less than 10 days prior to the second Monday of August of each year, and a notice thereof shall be advertised by the district for not less than three consecutive days in a newspaper of general circulation within the district, such advertising to begin not later than 30 days prior to the second Monday of August of each year.

(j) To enter into contracts, employ and retain personnel services and employ laborers; to create, establish and maintain such officers and positions as shall be necessary and convenient for the transaction of the business of the district, and to elect, appoint and employ such officers, attorneys, agents and employees therefor as shall be found by the board of directors to be necessary and convenient.

(k) To join with one or more other corporations public or private for the purpose of carrying out any of its powers, and not for that purpose to contract with such corporation or corporations for the purposes of financing and acquisitions, constructions and operations, and therein obligate itself severally or jointly with such other corporation or corporations; also to secure, guarantee or become surety for the payment of any indebtedness, or the performance of any contract or other obligation that may be, or shall have been, incurred or entered into by any corporation that may be, or shall have been, incurred or entered into by any corporation in which the district shall have acquired shares of stock by subscription or otherwise. Such contracts may provide for contributions to be made by each party thereto and for the division and apportionment of the expenses of such acquisitions, and operations, and the division and apportionment of the benefits, the services and products therefrom, and may provide for an agency to effect such acquisition and carry on such operations, and shall provide the powers and the methods of procedure for such agency the method by which such agency may contract. Such contract may contain such other and further covenants and agreements as may be necessary and convenient to accomplish the purposes hereof.

(l) To acquire water and water rights within or without the state; to develop, store and transport water; to subscribe for, purchase and acquire stock in canal companies, water companies and water users' associations; to provide, sell, lease and deliver water within or outside of the district for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining and metallurgical and any

and all other beneficial uses; to fix the rates therefor, and to acquire, construct, operate and maintain any and all works, facilities, improvements and property necessary or convenient therefor, and in the doing of all said things to obligate itself jointly with other persons and corporations, public and private, and execute and perform such obligations according to the tenor thereof.

Each city, the area of which shall be a part or all of any district incorporated hereunder, shall have a preferential right to purchase from the district, at such rates as shall be determined from time to time by the board of directors of such district, for distribution by such city, or any public utility therein empowered by said city for the purpose, for domestic, municipal and other beneficial uses within such city, a portion of the water served by the district which shall, from time to time, bear the same ratio to all of the water supply of the district as the total accumulation of amounts levied as taxes by the district against the property of such city which is within the area of the district shall bear to the total of all taxes levied by the district against the property in all of the cities the areas of which are within the area of the district.

(m) To invest any surplus money in the district treasury including such money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any bonded contract or other indebtedness or for any other purpose, not required for immediate necessities of the district, in its own bonds, or in treasury notes, or bonds, of the United States, or of this state, and such investment may be by direct purchase of any issue of such bonds or treasury notes, or part thereof, at the original sale of the same, or by the subsequent purchase of such bonds or treasury notes. Any bonds or treasury notes thus purchased and held may, from time to time be sold and the proceeds reinvested in bonds or treasury notes, as above provided. Sales of any bonds or treasury notes thus purchased and held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money, with which the bonds or treasury notes were originally purchased, was placed in the treasury of the district. The functions and duties authorized by this paragraph shall be performed by joint action of the controller and treasurer, with the approval of the attorney, under such rules and regulations as shall be prescribed by the board of directors of the district.

#### **73-8-20. Directors — Representation — Voting — Organization.**

(1) All powers, privileges and duties vested in or imposed upon any district incorporated hereunder shall be exercised and performed by and through a board of directors, all the members of which shall serve without compensation for the terms of office as hereinafter provided and who, in all events, shall be designated and appointed by the legislative body or bodies, respectively, of a city or cities the area of which is within a metropolitan water district; provided, however, that the exercise of any and all executive, administrative and ministerial powers may be by said board of directors delegated and redelegated to any of the offices created hereby or by the board of directors acting hereunder.

(2) In the event that the district shall be organized to comprise

the area of two or more cities, the board of directors herein referred to shall consist of at least one representative from each municipality, the area of which shall lie within the metropolitan water district. As a member of the board of directors, each representative shall be entitled to one vote on all questions, orders, resolutions and ordinances coming before the board, and shall be entitled to cast one vote for each ten million dollars, or major fractional part thereof, of assessed valuation of property taxable for district purposes in the city represented by him as shown by the assessment records of the county and evidenced by the certificate of the county auditor; provided, that each city shall have at least one vote. In lieu of one representative any city may at its option designate and appoint several representatives not exceeding one additional representative for each one million dollars of assessed valuation, but such representative shall cast the vote to which such city would otherwise be entitled as a unit and as a majority of such representatives present shall determine. The affirmative vote of members representing more than 50 per cent of the total number of votes of all the members shall be necessary and, except as otherwise herein provided, shall be sufficient to carry any order, resolution or ordinance coming before the board of directors. For the purposes of this section, the term "major fractional part" shall be deemed to mean a fractional part longer than one-half.

(3) In the event that a district shall include the area of only one municipality, the board of directors may consist of either five or seven members, as shall be determined by the legislative body of such municipality. Each director shall be entitled to cast one vote on all matters coming before the board; on a board of five members, the affirmative vote of three, and on a board of seven members, the affirmative vote of four, shall, except as otherwise provided herein, be necessary and shall be sufficient to carry any order, resolution or ordinance coming before the board.

(4) Members of the board of directors of any metropolitan water district who have been appointed as herein provided shall convene at the time and place fixed by the presiding officer of the municipality initiating the proceedings hereunder, and immediately upon convening, such board of directors shall elect from its membership a chairman, a vice-chairman; and a secretary, who shall serve for a period of two years, or until sooner recalled or resigning, or until his successor shall be elected and qualified.

(5) Every member of the board of directors of a metropolitan water district shall be a registered voter, a property taxpayer, and a resident of the municipality by the legislative body of which he is appointed. In each municipality the area of which is in a metropolitan water district, except in districts occupying the area of more than one city, one of the directors appointed by its legislative body to the board of directors shall be the commissioner of water supply and waterworks, or other comparable officer, however designated, who is in charge of such municipality's water supply and distribution system, if municipally owned, and who shall be known as the ex officio director; but except for such ex officio director, all other elected or appointed officers, or the employees of such municipality shall be ineligible for appointment to any district board;

and except for the ex officio director, any member of the metropolitan water district board of directors who at a time after his appointment to such board shall become elected or appointed to office in, or who becomes an employee of the municipality in which he resides shall immediately become disqualified as a director and shall forfeit his office, and the legislative body of such municipality shall immediately appoint a successor to serve the unexpired portion of his term of office. The appointment of directors by the legislative body of a municipality shall be made without regard to partisan political affiliations from among citizens of the highest integrity, attainment, competence and standing in the community, and it is the intent of this act that each municipality shall adhere so far as possible to a policy of continuing reappointment, at the expiration of their terms of office, of directors of high character and proven competence.

(6) Except as to an ex officio director, the terms of office of members of the board of directors shall be as follows:

(a) In metropolitan water districts comprising the area of two or more cities, six years.

(b) In metropolitan water districts comprising the area of only one city wherein the number of members of the board of directors, is five, one such member shall be appointed for a two-year term; one for a three-year term; one for a five-year term; one for a six-year term all as determined by lot; and upon the expiration of such terms, the ensuing terms of office for each shall be six years.

(c) In metropolitan water districts comprising the area of only one city wherein the number of members of the board of directors is seven, two such members shall be appointed for a two-year term; two for a four-year term and two for a six-year term, all as determined by lot; and upon the expiration of such terms, the ensuing terms of office for each shall be six years.

Every member of a board of directors shall serve until he resigns or until his successor has been duly appointed and qualified, or until recalled as provided in Section 73-8-52, and before assuming office every director, other than an ex officio director, shall first subscribe to the constitutional oath of office of the state of Utah, and such oath shall be delivered to and retained among the records of the secretary of the district.

(7) Members of the board of directors of any metropolitan water district who are serving as such on the effective date of this amendment and who are otherwise qualified as provided in subsection (5), shall immediately be reappointed to office by the legislative body or bodies, respectively, of the city or cities the area of which is included in a metropolitan water district, and for terms of office as provided in subsection (6).

#### **73-8-21. Powers of Directors.**

The board of directors shall have power:

##### **Meetings.**

(1) To fix the time and place or places at which its regular meetings

shall be held, and shall provide for the calling and holding of special meetings.

**Ordinances, Resolutions and Orders — Roll Call.**

(2) To make and pass ordinances, resolutions and orders not repugnant to the Constitution of the United States or of the state of Utah, or to the provisions of this act, necessary for the government and management of the affairs of the district, for the execution of the powers vested in the district and for carrying into effect the provisions of this act. On all ordinances the roll shall be called and the ayes and noes recorded. Resolutions and orders may be adopted by viva voce, but on demand of any member the roll shall be called. No ordinance shall be adopted unless it shall have been introduced on a day previous to the time of such adoption except by unanimous vote of all the members of the board of directors present, provided there shall be present directors from not less than three-fourths of all cities composing said metropolitan water district and representing not less than three-fourths of the total votes of said district; provided, that in lieu of such previous introduction or unanimous vote any ordinance may be mailed by registered mail, postage prepaid to each member of the board of directors at least five days prior to the day upon which such ordinance shall be presented for adoption. All ordinances shall take effect upon their adoption by the board of directors.

**Location of Offices:**

(3) To fix the location of the principal place of business of the district and the location of all offices and departments maintained hereunder.

**Business Administration, Officers and Employees.**

(4) To prescribe by ordinance a system of business administration and to create any and all necessary offices which shall include the offices of controller and of treasurer and to select and employ, and establish and re-establish the powers, duties and compensation of all officers and employees and prescribe the periods, terms and conditions of their employment, and to require and fix the amount of all official bonds necessary for the protection of the funds and the property of the district.

**Civil Service**

(5) To prescribe by ordinance a system of civil service.

**Delegation of Authority to Officers.**

(6) By ordinance or resolution to delegate and redelegate to officers of the district power to employ clerical, legal and engineering assistants and labor, and, under such conditions and restrictions as shall be fixed by the directors, power to bind the district by contract.

**Claims, Method of Auditing — Construction of Works — Letting Contracts.**

(7) To prescribe a method of auditing and allowing or rejecting claims and demands; also to prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures or equipment, or the performance or furnishing of labor, materials or supplies, required for the carrying out of any of the purposes of this act; provided, that in cases where work is not to be done by the district itself by force account, and the amount involved shall be \$10,000, or more, the board of directors shall provide for the letting or

inviting bids, at least once and not less than ten days prior to the expiration of the period within which bids shall be received, subject always to the right of said board to reject any and all proposals. Provided, likewise, that the board of directors in advertising for bids and in letting contracts as above provided, may require all articles to be furnished to the district thereunder to be manufactured, produced or fabricated in the United States or its territories, and may prohibit the use in, or employment in connection with the carrying out of such contracts by the contractor or any sub-contractor, of all machinery or materials except such as shall have been manufactured, produced or fabricated in the United States or its territories, if such are available, the question of such availability to be determined by the board of directors. Provided, further, that contracts, in writing or otherwise, may be let without advertising for or inviting bids, when any repairs, alterations, or other work or the purchase of materials, supplies, equipment or other property shall be deemed by the board of directors to be of urgent necessity, and shall be authorized by a two-thirds vote thereof.

#### Rates.

(8) To fix the rates, from time to time, at which water shall be sold; provided, however, the rates shall be equitable, although not necessarily equal or uniform, for like classes of service throughout the district.

#### 73-8-27. Validity of Signatures.

In case of any such officers, whose signatures or countersignatures appear on the bonds or coupons, shall cease to be such officer before the delivery of such bonds to the purchaser, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until the delivery of such bonds.

Any officer whose signature or countersignature is required on bonds and coupons may make written request to, and the board of directors of the metropolitan water district issuing bonds as herein provided shall thereupon grant and by resolution authorize the, use of his signature on bonds and coupons by facsimile imprinting in lieu of his hand-affixed signature, and such imprinted facsimile signature shall in every instance be valid and sufficient for all of the purposes of such bonds and coupons.

#### 73-8-35. Taxation — Assessed Valuation.

On or before the first Monday of August of each year, it shall be the duty of the auditor of each county wherein such district or any part thereof shall lie, to prepare and deliver to the controller of the district a certificate showing the assessed valuation of all property within the district lying in the county, and also such assessed valuation segregated according to cities, the area of which lies within the district.

#### 73-8-36. Rate of Taxation.

On or before the Friday preceding the second Monday of August the board of directors of the district shall by resolution determine the amount of money necessary to be raised by taxation during the fiscal year beginning the 1st day of January next preceding and shall fix the contracts to the lowest responsible bidder, after publication of notices

rate of taxation of the areas of each separate city within the district, designating the number of mills upon each one dollar of assessed valuation of taxable property in each of said areas in each county and shall levy a tax accordingly,

(a) Sufficient to meet interest and sinking fund requirements on, and/or any payment to principal of, outstanding bonded and other indebtedness of said district; and sufficient to meet the payment of the principal and interest on any refunding bonds, or on any bonds the issuance of which may have been authorized as herein provided, and which bonds have not been sold but which, in the judgment of the board of directors will be sold prior to the time when money will be available from the next subsequent tax levy, and in case such bonds are not so issued and sold or such tax for any other reason is not required for said purpose, the tax so levied shall be applied to the payment of interest and/or principal on any refunding bonds, or on any bonds authorized as herein provided, then outstanding or subsequently issued and/or sold; or on any contract or other indebtedness and

(b) For all other district purposes.

#### **73-8-37. Amounts and Installments for Cities.**

The board of directors shall also cause to be computed and shall declare in said resolution the amount of money to be derived from the area of the district lying within each separate municipality by virtue of the tax levy in accordance with the provisions of subdivision (h) of section 73-8-18. The board shall immediately cause certified copies of such resolution to be transmitted to the presiding officer of the governing body of each such city.

#### **73-8-39. Tax Rates for Cities.**

On or before the Friday preceding the second Monday in August the controller of the district shall cause to be prepared and transmitted to the auditor of each county in which the district shall lie, a statement showing the tax rate to be applied to assessed property in each city, which rate shall be the rate fixed by resolution of the board of directors.

#### **73-8-40. Collection of Taxes.**

Upon receipt by the auditor of each county wherein such district, or any part thereof, shall lie, of a certified copy of the controller's statement showing the tax rate to be applied to assessed property in each city, it shall be the duty of the county officers to collect taxes for the benefit of the district at the rates specified as herein provided. The taxes so levied shall be computed and collected at the time and in the manner required by law for the computation and collection of taxes for county purposes, and the property subject to such tax shall be subject to the same penalties for delinquency, and the same provision of law relating to the sale of property for nonpayment of county taxes and redemption thereof shall apply to the tax herein authorized. When so collected, such taxes shall be paid over to the treasurer of the district, subject to the deduction herein authorized.

#### **73-8-45. Expenses of Incorporation.**

Any city which shall incur expenses in preliminary work in preparing



for the incorporation of or in the incorporation of any district hereunder likewise may certify the amount thereof, without interest, to the board of directors of said district at any time within four years from the date of the incorporation of such district, and if allowed by the board of directors, such amount shall be credited to the city incurring the same, and shall be considered as a payment for water purchased, or to be purchased, by such city from the district.

**73-8-52. Recall and Resignation of Directors.**

Every member of the board of directors of a metropolitan water district formed hereunder shall be subject to recall for cause after charges have been preferred and hearing thereon held by the governing body of the municipality from which such member shall be appointed, and any member may resign from said board of directors and any office held by him in said district.

**Section 2. Sections Enacted.**

Sections 73-8-57, 73-8-58 and 73-8-59, Utah Code Annotated 1953, are enacted to read:

**73-8-57. Tax Revenues May be Spent in Ensuing Years.**

Tax revenues levied and collected pursuant to the provisions of sections 73-8-18-(i) and 73-8-36 need not necessarily be expended during the fiscal year of their levy or collection but may, when so elected by the board of directors, be expended in the fiscal year or years ensuing.

**73-8-58. Directors May Maintain Reserve Fund.**

The board of directors of a metropolitan water district is hereby authorized to create and maintain, out of revenues of any nature available to it, a reserve fund and to expend therefrom when it deems necessary sums to meet immediate needs and emergencies such as major catastrophe, earthquake, drought relief or any other happening which imperils the public health and safety, and, among other things, but without intention to limit, for any district purposes necessary for the health, safety and security of the inhabitants of the district; provided, that such reserve fund shall in no event exceed ten per cent of the total investment value, at cost, of such metropolitan water district in water acquisitions, water rights, reservoirs, pipelines and water treatment plants and the like, whether such investments are financed by such district directly or for its benefit by the United States or the state of Utah. Such reserve funds may also be drawn upon by the board of directors when in its discretion it is advisable to do so either in abatement of a tax levy, in lieu of a tax levy, or in avoidance of an increase in a tax levy for any year.

**73-8-59. Savings Clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

**Section 3. Sections Repealed.**

Sections 73-8-38, 73-8-43, 73-8-44, 73-8-46, 73-8-47 and 73-8-48, Utah Code Annotated 1953, are hereby repealed.

Approved March 18, 1963.

## PROBATE CODE

### CHAPTER 181

H. B. No. 10

(Passed February 5, 1963. In effect May 14, 1963)

#### DECEDENTS ESTATES

**An Act Amending Sections 75-9-2 and 75-14-4 Utah Code Annotated 1953 Relating to Decedent's Estates and Providing for the Contents of Notice to Creditors and the Time for the Presentment of Claims.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 75-9-2, Utah Code Annotated 1953 is amended to read:

#### **75-9-2. Time Limit for Presenting Claims.**

The time expressed in the notice, unless otherwise ordered by the court, must be three months after its first publication. In case an executor or administrator resigns, is removed or dies before the time for presentation of claims has expired, his successor must give notice for the unexpired time allowed for such presentation.

#### **Section 2. Section Amended.**

Section 75-14-4, Utah Code Annotated 1953 is amended to read:

#### **75-14-4. Notice to Creditors—Form.**

Notice to creditors shall be substantially in the following form: Estate of .....  
Creditors will present claims with vouchers to the undersigned at (stating place) on or before (stating the last day on which claims may be presented) ; claims must be presented in accordance with the provisions of 75-9-5, Utah Code Annotated 1953, and with proper verification as required therein.

\_\_\_\_\_  
(administrator or executor)

Approved February 6, 1963.

### CHAPTER 182

H. B. No. 8

(Passed February 6, 1963. In effect May 14, 1963)

#### CONVEYANCES OF EXECUTORS AND ADMINISTRATORS

**An Act Amending Section 75-10-17, Utah Code Annotated 1953, as Amended by Chapter 84, Laws of Utah, 1955, Relating to Conveyances Made by Executors and Administrators; and Providing that When Property Is Sold by an Executor or Administrator Without Objection of the Widow the Widow's Statutory Interest in the Property Is Conveyed to the Purchaser.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 75-10-17, Utah Code Annotated 1953, as amended by Chapter 84, Laws of Utah, 1955, is amended to read:

**75-10-17. Conveyances—Widow's Share.**

After confirmation conveyances must be executed to the purchaser by the executor or administrator, conveying all the right, title, interest and estate of the decedent in the premises at the time of his death. If prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises other than or in addition to that of the decedent at the time of his death, such right, title or interest also passes by such conveyances.

When the sale is made and confirmed after due notice to the widow, the conveyance also passes the right of the widow to her statutory interest in the property as survivor and it shall not be necessary for her to join in the execution of said conveyance, but she shall be entitled to one-third of the gross proceeds of the sale as her own separate property which shall not be subject to inheritance taxation or the debts of the estate.

Approved February 6, 1963.

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**CHAPTER 183**

H. B. No. 7.

(Passed March 1, 1963. In effect May 14, 1963.)

**HANDLING FUNDS FOR MINORS****An Act Relating to Guardianship, Providing When Guardianship is not Necessary.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Accounting for Property of Minor.**

If a minor has no guardian of his estate, any money belonging to the minor not exceeding the sum of \$1,000 or other property belonging to the minor not exceeding \$1,000 in value may be paid or delivered to a parent of the minor entitled to the custody of the minor to hold same for the minor, upon written assurance verified by the oath of such parent that the total estate of the minor does not exceed \$2,500 in value; and the written receipt of such parent shall be an acquittance of the person making such payment of money or delivery of other property.

**Section 2. Compromising Debts of Minor.**

When a minor has a disputed claim for damages, money or other property against a third person, his father, or if his father is dead or the parents of said minor are living separate or apart and his mother then has care or custody of said minor, then his mother, or the general guardian, if any, of the minor, shall have the right to compromise, or execute a covenant not to sue on, such claim; but before the compromise or covenant is valid it must be approved by the district court of the county where the minor resides, after the filing therein of a verified petition in writing by such father, mother or general guardian. If the court approves the compromise or covenant and the money or the value of other property to be paid or delivered under the compromise or covenant does not exceed \$10,000, it shall direct, either (a) that a general guardian

be appointed and that the money or other property be paid or delivered to such guardian or (b) that the money or other property be paid or delivered to the father or mother, without the filing of a bond, and, if money and in excess of \$1,000, that it be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, subject to withdrawal only upon the order of the court until the minor reaches the age of majority. If the court approves the compromise or the execution of the covenant and the money or the value of other property to be paid or delivered under the compromise or covenant exceeds \$10,000, the court shall require a general guardian to be appointed and that the money or other property be paid or delivered to such guardian.

### Section 3. Accounting at Majority.

The parent receiving any such money or other property shall account to the minor for such money or other property when the minor reaches the age of majority.

Approved March 6, 1963.

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## CHAPTER 184

S. B. No. 40

(Passed March 8, 1963. In effect May 14, 1963)

### UNIFORM GIFTS TO MINORS

**An Act Amending Sections 75-15-3, 75-15-4, 75-15-5, 75-15-7, Utah Code Annotated 1953, as Enacted by Chapter 130, Laws of Utah 1957, Relating to the Utah Uniform Gifts to Minors Act; Providing That if the Gift Is Money, It May Be Paid or Delivered to a Savings and Loan Association for Investment in Shares Insured by the Federal Savings and Loan Insurance Corporation.**

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 75-15-3, Utah Code Annotated 1953, as enacted by Chapter 130, Laws of Utah 1957, is amended to read:

#### 75-15-3. Gifts to Minors—Form.

1. An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Utah Uniform Gifts to Minors Act;"

(2) If the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in substantially the following form, signed by the donor and the person designated as custodian:

**"GIFT UNDER THE UTAH UNIFORM GIFTS TO MINORS ACT**

I, (name of donor) hereby deliver to (name of custodian) as custodian for (name of minor) under the Utah Uniform Gifts to Minors Act,

the following security (ies): (insert an appropriate description of the security or securities delivered sufficient to identify it or them)

(Signature of donor) \_\_\_\_\_

(name of custodian) hereby acknowledges receipt of the above described security (ies) as custodian for the above minor under the Utah Uniform Gifts to Minors Act.

Dated: \_\_\_\_\_

(Signature of custodian) \_\_\_\_\_.”

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account, or to a savings and loan association for investment in shares or savings accounts insured by the Federal Savings and Loan Insurance Corporation, in the name of the donor, another adult person or a trust company, followed, in substance, by the words: “as custodian for (name of minor) under the Utah Uniform Gifts To Minors Act”.

2. Any gift made in a manner prescribed in subsection (1) may be made to only one minor and only one person may be the custodian.

3. A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor’s failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

## **Section 2. Section Amended.**

Section 75-15-4, Utah Code Annotated 1953, as enacted by Chapter 130, Laws of Utah 1953, is amended to read as follows:

### **75-15-4. Gift—What Granted.**

1. A gift made in a manner prescribed in this act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this act.

2. By making a gift in a manner prescribed in this act, the donor incorporates in his gift all the provisions of this act and grants to the custodian, and to any issuer, transfer agent, bank, broker, savings and loan association, or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this act.

## **Section 3. Section Amended.**

Section 75-15-5, Utah Code Annotated 1953, as enacted by Chapter 130, Laws of Utah 1957, is amended to read:

### **75-15-5. Custodian—Powers and Duties—Minors Over 14 Years of Age—Minors Attaining Age of 21 or Dying—Investments—Registering Securities—Records—Powers in Trust.**

1. The custodian shall collect, hold, manage, invest and reinvest the custodial property.

2. The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

3. The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

4. To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor.

5. The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this act.

6. The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security of which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

7. The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Utah Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker, savings and loan association, or in a bank in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Uniform Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

8. The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

9. A custodian has, and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in this act, all the rights and powers which a guardian has with respect to property not held as custodial property.

**Section 4. Section Amended.**

Section 75-15-7, Utah Code Annotated 1953, as enacted by Chapter 130, Laws of Utah 1957, is amended to read:

**75-15-7. Persons Dealing With Custodian.**

No issuer, transfer agent, bank, broker, savings and loan association, or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this act, or is obliged to inquire into the validity or propriety under this act of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

Approved March 11, 1963.

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## PENAL CODE

### CHAPTER 185

H. B. No. 134.

(Passed March 14, 1963. In effect May 14, 1963.)

#### ILLEGAL ADVERTISING

**An Act Amending Section 76-4-9, Utah Code Annotated 1953, Extending the Scope of Civil Enforcement for Violation of Certain Laws Relating to Illegal Advertising and Redress.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 76-4-9, Utah Code Annotated 1953, is hereby amended to read:

**“76-4-9. Civil Liability.**

Any living person, or the heirs or personal representatives of any deceased person, whose name, portrait or picture is used within this state for advertising purposes or for the purposes of trade, without the written consent first obtained as provided in the next preceding section and, any person or corporation may maintain an action against a violator of any other section of this chapter defining advertising offenses. If in such actions the court shall find that the defendant is violating or has violated any of the provisions of this act, it shall enjoin

the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved, but if damages are alleged and proved, the plaintiff in said action shall be entitled to recover from the defendant the actual damages, if any, sustained in addition to injunctive relief and a reasonable attorney's fee. And in the case of a violation of 76-4-8, if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is declared to be unlawful, the jury or court, if tried without a jury, in its discretion may award exemplary damages."

Approved March 18, 1963.

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## CHAPTER 186

H. B. No. 217.

(Passed March 14, 1963. In effect May 14, 1963.)

### HUMANE TREATMENT OF ANIMALS

**An Act Relating to the Public Health and Welfare; Providing for Humane Treatment and Protection of Pets and Regulating the Humane Use of Animals for the Diagnosis and Treatment of Human and Animal Diseases, the Advancement of Veterinary, Dental, Medical and Biological Sciences, and for the Testing, Improvement and Standardization of Laboratory Specimens, Biologic Products, Pharmaceuticals and Drugs, and Providing for Certification Therefor and for Penalties for Violations.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Purpose of Act.**

The public health and welfare depend on the humane use of animals for the diagnosis and treatment of human and animal diseases, the advancement of veterinary, dental, medical and biological sciences, and for the testing, improvement and standardization of laboratory specimens, biologic products, pharmaceuticals and drugs.

#### **Section 2. Definitions.**

As used in this act, "institution" means any school or college of agriculture, veterinary medicine, medicine, pharmacy, dentistry or other educational, hospital or scientific establishment properly concerned with the investigation of or instruction concerning the structure or functions of living organisms, the cause, prevention, control or cure of diseases or abnormal condition of human beings or animals.

#### **Section 3. Certification for Impounding Animals.**

Such institutions may apply to the state department of health for a certification to obtain animals from establishments maintained for the impounding, care and disposal of animals seized by lawful authority. If, after investigation, the state department of health finds that the institution making request for certification is a fit and proper agency within the meaning of this act, to receive certification, and that the public interest will be served thereby, it may certify such institution



authorizing it to obtain animals hereunder, subject to the restrictions and limitations herein provided.

**Section 4. Establishment to Provide Animals.**

It shall be the duty of the supervisor of any establishment referred to in Section 3 of this act to make available to an institution certified hereunder, from the available impounded animals seized by lawful authority, such number of animals as the institution may request, provided, however, that such animals shall have been impounded for not less than five days or for such other minimum period of time as may be specified by municipal ordinance and remain unclaimed and unredeemed by their owners or by any other person entitled to do so. Such establishment shall first make a reasonable effort to find the rightful owner of such animal, and if such owner is not found, to then make the animal available for adoption all during the foregoing period of five days.

**Section 5. Animals to be Used for Scientific Activities.**

The certified institution shall provide, at its own expense, for the transportation of such animals from the establishment to the institution and shall use them only in the conduct of its scientific and educational activities and for no other purpose. The institution may reimburse the establishment for any actual expense incurred in holding the animals beyond the period referred to in section 4.

**Section 6. Public Records.**

Each establishment referred to under section 3 of this act shall keep a public record of all animals received and disposed of.

**Section 7. Department of Health May Revoke Certification.**

The state department of health upon fifteen days' written notice and an opportunity to be heard, may revoke the certification granted any institution (1) if the institution has violated any provision of this act, or (2) has failed to comply with the conditions required by the state department of health in respect to the issuance of such certification.

**Section 8. Board to Adopt Rules and Regulations.**

The state board of health shall have the power to adopt such rules and regulations, not inconsistent with this act, as may be necessary to carry out the provisions of this act, for controlling the humane use of animals for the diagnosis and treatment of human and animal diseases, the advancement of veterinary, dental, medical and biological sciences and the testing, improvement and standardization of laboratory specimens, biologic projects, pharmaceuticals and drugs, and shall have the right whenever it deems advisable or in the public interest to inspect or investigate any institution which has applied for certification or has been granted certification hereunder.

**Section 9. Penalty — Violation of Act.**

It shall be a misdemeanor for any person or corporation to violate any of the provisions of this act.

Approved March 22, 1963.

## CHAPTER 187

H. B. No. 137.

(Passed March 14, 1963. In effect May 14, 1963.)

## OBSCENITIES

**An Act Relating to Obscenity and Obscene Materials; Providing That it is Unlawful to do Certain Obscene or Lewd Acts; to Prepare, Process, or Disseminate Obscene Materials, and to Sell or Distribute such Materials to Persons Under Eighteen Years, and Prescribing the Penalties for Same; Providing for the Enjoining of the Sale and Distribution of Obscene Materials; and Repealing Chapter 39 of Title 76, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Unlawful to Associate, Procure or Import Obscene Material or Acts.**

It shall be unlawful for any person to wilfully either :

(1) Associate in a lewd, lascivious or obscene manner with any person, whether married or unmarried, engage in open and gross lewdness, lascivious or obscene behavior, or may any open, public, indecent or obscene exposure of his or her person or of his or her private parts, or the person or private parts of another ; or,

(2) Procure, counsel or assist any person to expose himself, or to take part in any artists' model exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is adapted to excite to obscene or lewd thoughts or acts ; or,

(3) Import, write, compose, stereotype, print, design, copy, draw, paint or otherwise prepare, publish, sell, offer for sale, display, exhibit by machine or otherwise or distribute any writing, paper, book, picture, drawing, magazine, pamphlet, print, design, figure, still or motion picture, photograph or negative thereof, photocopy, engraving, sound recording, card, instrument or other such article which is obscene, or buy, procure, receive or have in his possession any such writing, paper, book, picture, drawing, magazine, pamphlet, print, design, figure, still or motion picture, photograph or negative thereof, photocopy, engraving, sound recording, card, instrument or other article which is obscene, with the intent of selling, exhibiting, loaning or circulating, or with the intent to introduce the same into a family, school, or place of education, or any other place for the purpose of selling, exhibiting, loaning, or circulating ; or,

(4) Write, compose or publish any notice or advertisement of any such writing, paper, book, picture, drawing, magazine, pamphlet, print, design, figure, still or motion picture, photograph or negative thereof, photocopy, engraving, sound recording, card, instrument or other article which is obscene, or any notice or advertisement of any article, prescription or preparation for producing or facilitating a miscarriage ; or,

(5) Sing or speak an obscene or lewd song, ballad or any other obscene or lewd words in any public place or in the presence of other persons who may be annoyed thereby ; or,

(6) Sell or distribute or import, print or publish for the purpose of

selling or distributing to a person under the age of eighteen years a book, pamphlet, ballad, printed paper, phonograph record, print, picture, figure, image or description or other article which manifestly tends to corrupt the morals of youths under the age of eighteen years; or introduce into a family, school or place of education, or buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed paper, phonograph record, print, picture, figure, image or other thing either for the purpose of sale, exhibition, loan or circulation to a person under the age of eighteen years or with intent to introduce the same into a family, school, or place of education for such a purpose. In deciding whether said items tend to corrupt the morals of youth, the test shall be: whether to the average youth under the age of eighteen years, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest.

### **Section 2. Definition.**

As used in this act "wilfully" means simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law or to injure another or to require any advantage. Every person having any of the items described in subsections (3) (4) and (6) of section 1 in his or her possession shall have the duty to make a reasonable investigation of the contents thereof and shall be presumed to have knowledge of the contents thereof which such an investigation would disclose.

### **Section 3. Authorization to Arrest and Seize.**

Every person who is authorized to arrest any person for a violation of subsections (3) (4) and (6) of section 1 is equally authorized to seize any of the prohibited articles found in possession or under the control of the person so arrested and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

### **Section 4. Magistrate May Examine and Impound.**

The magistrate to whom any of the prohibited articles are delivered pursuant to section 3 must upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such article and if he finds it to be obscene or tends to corrupt the morals of the youth, as the case may be, he must deliver one copy to the prosecuting attorney of the municipality or county in which the accused is liable to complaint or trial, and must at once impound all the other copies until the defendant is acquitted, the prosecution abandoned, or the time for an appeal has elapsed, or in case of an appeal, until the matter is finally adjudicated by the appropriate appellate court, and then he shall cause them to be destroyed or returned to the accused, as the case may be.

### **Section 5. Prosecuting Attorney May Hold Evidence.**

Upon the final conviction of the accused, such prosecuting attorney must cause any writing, paper, book, picture, print, design, figure, still or motion picture, photograph or negative thereof, photocopy, engrav-

ing, sound recording, card, instrument or other thing which is obscene, or which tends to corrupt the morals of the youth, in respect whereof the accused stands convicted and which remains in the possession or under the control of such prosecuting attorney to be destroyed.

#### **Section 6. District Courts Have Jurisdiction of Cases.**

The district courts of this state shall have jurisdiction to enjoin the sale and distribution of obscene articles as follows:

(1) The county attorney, the city attorney or the town attorney of a county, city or town in which a person sells or offers for sale or distributes or is about to sell or distribute or has in his possession with intent to sell or distribute any writing, paper, book, drawing, magazine, pamphlet, print, design, figure, still or motion picture, photograph or negative thereof, photocopy, engraving, sound recording, card, instrument or other article which said attorney believes to be obscene may maintain for and on behalf of the said county, city or town, an action for an injunction against such person in the district court to prevent the sale or further sale or the distribution or further distribution or the acquisition or possession of such article or articles. Said action shall be in accordance with the Utah Rules of Civil Procedure except as herein provided. A jury trial of the issue of obscenity may be demanded by any party.

(2) The person sought to be enjoined shall be entitled to a trial of the issues as soon as possible after joinder of issue, and a decision shall be rendered by the court within as soon as possible after the conclusion of the trial. If on the trial of the issue the court or jury, if one is demanded, determines from the evidence, which must be clear and convincing, that the article is obscene, the court shall enter a judgment or decree enjoining the sale or further sale or the distribution or the further distribution or the acquisition or possession of such article.

(3) Upon application of the plaintiff for a preliminary injunction after suit is commenced and pending the trial of the issues, the court may forthwith restrain the defendant from selling or offering such article for sale until one day after joinder of issue. The court shall not conduct a hearing on said application for a preliminary injunction without first giving the defendant at least three days notice of such hearing. No security shall be required to make said preliminary injunction.

(4) In the event that a final order or judgment of injunction be entered in favor of the petitioner and against the person sought to be enjoined, such final order shall contain a provision directing the person to surrender to the sheriff of the county any of the matter described in this section, and such sheriff shall be directed to seize and destroy the same.

(5) Every person who sells, distributes or acquires possession with intent to sell or distribute any of the matter referred to in this section, after service upon him of a summons and complaint in any action brought by such county, city or town attorney pursuant to this section, is presumed to have a knowledge of the contents thereof from the date of said service.

(6) Any person not admitted to do business in this state which publishes and causes any of the matter referred to in subsection (1) of this section 6 to be sent into this state for ultimate sale at retail in this state thereby consents that it may be sued in any proceedings commenced pursuant to this section and thereby appoints the secretary of state to be his true and lawful attorney upon whom may be served all legal processes in any action or proceeding against it growing out of such distribution of matter for sale at retail in this state and such distribution shall be a signification of its agreement that such process shall in any action against it which is so served, be of the same legal force and validity as if served upon him personally. Service of such process shall be made by serving a copy thereof upon the secretary of state or by filing such copy in his office together with payment of a fee of \$2.00, and such service shall be sufficient service upon the said nonresident; provided, that notice of such service and a copy of the process are within ten days thereafter sent by mail by the plaintiff to the defendant at the address of such defendant as appears on the matter distributed and if no address so appears then at the last known address of the defendant; and provided further that the plaintiff's affidavit of compliances with the provisions of this subsection are attached to the summons. The secretary of state shall keep a record of all such processes so served which shall show the day and hour of such service. Nothing in this subsection shall be construed to abrogate or preempt the operation of Rule 17 (e) of the Utah Rules of Civil Procedure.

(7) This section shall apply only to the article or articles before the court, and it shall not apply to future articles not yet in existence or to other articles already in existence but not before the court.

(8) This section shall not be construed in any way to limit the district courts in the exercise of their jurisdiction under any other provision of law.

#### **Section 7. Judge or Jury to Determine.**

Whenever it appears in this act, the word "obscene" shall have the following meaning: whether to the average adult person, applying contemporary community standards, the dominant theme of the material or the conduct taken as a whole appeals to the prurient interest. The judge or the jury, if one is impaneled, shall be the sole triers of what is obscene. The community standards shall be the standards of the community of the State of Utah. Prurient interest shall mean a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters and is a matter which is utterly without redeeming social importance.

#### **Section 8. Person — Definition.**

Whenever it appears in this act, the word "person" shall not be limited to the individuals only but shall include public and private corporations, firms, joint associations, partnerships, and the like.

**Section 9. Penalties.**

Penalties: Every person convicted of violating this act shall be punished for the first offense by a fine of not more than \$299, or imprisonment of not more than six months in the county jail, or both such fine and imprisonment; and shall be punished for each such offense thereafter by a fine of not more than \$5,000, or imprisonment of not more than five years in the state prison, or both such fine and imprisonment.

**Section 10. Saving Clause.**

If any clause, sentence, paragraph or part of this act or its application to any person or circumstance shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act or its application to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, persons or circumstances or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**Section 11. Exceptions to Act.**

This act shall not apply to person who may possess and distribute obscene material or participate in the other conduct which is proscribed, when such possession, distribution, or participation occurs in the course of bona fide educational, artistic, scientific, medical, or comparable research or study or in the course of law enforcement activities or in other like circumstances where the nature of the possession, distribution, or participation is not related to the appeal to prurient interest, in addition, nothing in this chapter shall apply to any recognized historical society or museum, the state law library, any county or city or town law library, the state library, the public library, any library of any college or university or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

**Section 12. Chapter Repealed.**

Chapter 39 of Title 76, Utah Code Annotated 1953, is hereby repealed.

Approved March 20, 1963.

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**CHAPTER 188**

H. B. No. 4.

(Passed March 11, 1963. In effect May 14, 1963.)

**AIR POLLUTION**

**An Act Enacting a New Section to be Known as Section 76-43-2.1, Utah Code Annotated 1953, Defining Air Pollution as a Public Nuisance, and Making Same a Misdemeanor.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Enacted.**

Section 76-43-2.1, Utah Code Annotated 1953, is enacted to read:

**76-43-2.1. Air Pollution — Penalty — Misdemeanor.**

Any person including a private or municipal corporation or other governmental agency, who: Causes air pollution which means the presence in the atmosphere of one or more contaminants such as dust, fumes, gas, mist, odor, smoke, vapor, or radioactive materials in quantities of characteristic and of duration such as to be injurious to human life or cause substantial economic injury to plant or animal life, or property, is guilty of a misdemeanor.

Approved March 15, 1963.

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**CHAPTER 189**

S. B. No. 73

(Passed March 12, 1963. In effect May 14, 1963)

**DAMAGE TO TELEPHONE PROPERTY****An Act Making It a Felony to Wilfully or Maliciously Damage Certain Telephone Property.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Malicious Damage—Telephone Property.**

Every person who wilfully or maliciously displaces, removes, injures or destroys any public telephone instruments, or any part thereof, or any radio or microwave installation, or who wilfully or maliciously breaks into any coin box associated therewith, is guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding \$1,000 or by imprisonment in the state prison for not more than five years, or by both such fine and imprisonment.

Approved March 16, 1963.

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**CODE OF CRIMINAL PROCEDURE**
**CHAPTER 190**

H. B. No. 42.

(Passed March 11, 1963. In effect May 14, 1963.)

**UNIFORM RECIPROCAL SUPPORT ACT****An Act Enacting the Uniform Reciprocal Enforcement of Support Act and Repealing Chapter 61 of Title 77, Utah Code Annotated 1953.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Purpose of Act.**

The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

**Section 2. Definitions.**

In this act, unless the context otherwise requires:

- (a) "State" includes any state, territory or possession of the United

States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(b) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commences.

(c) "Responding State" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(d) "Court" means the district court of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(e) "Law" includes both common and statutory law.

(f) "Duty of support" includes any duty of support imposed or imposed by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise.

(g) "Obligor" means any person owing a duty of support.

(h) "Obligee" means any person to whom a duty of support is owed and a state or political subdivision thereof.

(i) "Governor" includes any person performing the functions of governor or the executive authority of any territory covered by the provisions of this act.

(j) "Support order" means any judgment, decree or order of support, whether temporary or final, whether subject to modification, revocation or remission regardless of the kind of action in which it is entered.

(k) "Rendering state" means any state in which a support order is originally entered.

(l) "Registering court" means any district court of this state in which the support order of the rendering states is registered.

(m) "Register" means to file in the registry of foreign support orders.

(n) "Certification" shall be in accordance with the laws of the certifying state.

### **Section 3. Remedies in Addition to Existing Law.**

The remedies herein provided are in addition to and not in substitution for any other remedies.

### **Section 4. Duties.**

Duties of support arising under the law of this state when applicable under Section 7, bind the obligor, present in this state, regardless of the presence or residence of the obligee.

### **Section 5. Governor May Demand or Surrender for Extradition Purposes.**

The governor of this state (1) may demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state and (2) may surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of any person in such other state. The provisions for extradition of



criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

#### **Section 6. District Attorney to Investigate for Governor.**

(a) Before making the demand on the governor of any other state for the surrender of a person charged in this state with the crime of failing to provide for the support of any person, the governor of this state may require any district attorney of this state to satisfy him that at least sixty days prior thereto the obligee brought an action for the support under this act, or that the bringing of an action would be of no avail.

(b) When under this or a substantially similar act, a demand is made upon the governor of this state by the governor of another state for the surrender of a person charged in the other state with the crime of failing to provide support, the governor may call upon any district attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this act or would be effective.

(c) If an action for the support would be effective and no action has been brought, the governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the governor may decline to honor the demand so long as the person demanded is complying with the support order.

#### **Section 7. Duties of Support — Obligor.**

Duties of support applicable under this act are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

#### **Section 8. State or Political Subdivision to be Reimbursed.**

Whenever the state or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of security reimbursement of expenditures so made and of obtaining continuing support.

#### **Section 9. Duties of Support Enforceable.**

All duties of support, including arrearages, are enforceable by action irrespective of the relationship between the obligor and the obligee.

#### **Section 10. Jurisdiction — District Court.**

Jurisdiction of all proceedings hereunder is vested in the district court.

**Section 11. Petition — Provisions.**

The petition shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the respondent and his dependents for whom support is sought, and all other pertinent information. The petitioner may include in, or attach to, the petition any information which may help in locating or identifying the respondent, such as a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employes, his finger prints, or social security number.

**Section 12. County Attorney to Represent Petitioner.**

The county attorney, upon the request of the court or the chairman of the public welfare commission, or the county welfare director, shall represent the petitioner in the initiation of any proceedings under this act.

**Section 13. Petition for Minor Obligee.**

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

**Section 14. Court Requirements.**

If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the petition (2) its certificate and (3) this act to be transmitted to the court in the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt of the court of the initiating state.

**Section 15. Court Costs May be Paid by Obligor.**

There shall be no filing fee or other costs taxable to the obligee, but a court of this state acting either as an initiating or responding state may in its discretion direct that any part of or all fees and costs incurred in this state, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both petitioner and respondent or either, be paid by the obligor.

**Section 16. Court May Obtain Defendant for Process.**

When the court of this state, acting either as an initiating or responding state, has reason to believe that the respondent may flee the jurisdiction it may (1) as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible under the law of the responding state; or

(2) As a responding state, obtain the body of the respondent by appropriate process.

**Section 17. Duties of Chairman of Public Welfare Commission.**

The chairman of the public welfare commission is hereby designated as the state information agency under this act, and he shall

(1) Compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit the same to the state information agency of every other state which has adopted this or a substantially similar act, and

(2) Maintain a register of such lists received from other states and transmit copies thereof as soon as possible after receipt to every court in this state having jurisdiction under this act.

**Section 18. Docket Petition — Notify District Attorney.**

(a) After the court of this state acting as a responding state has received from the court of the initiating state the aforesaid copies the clerk of the court shall docket the case and notify the district attorney of his action.

(b) It shall be the duty of the district attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this state to give the court jurisdiction of the respondent or his property and shall request the court to set a time and place for a hearing.

**Section 19. Duties of District Attorney.**

(a) The district attorney shall, on his own initiative, use all means of at his disposal to trace the respondent or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the district attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating state.

(b) If the respondent or his property is not found in the judicial district and the district attorney discovers by any means that the respondent or his property may be found in another judicial district of this state or in another state he shall so inform the court and thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other judicial district or to a court in the other state or to the information agency or other proper official of the other state with a request that it forward the documents to the proper court. Thereupon both the court of the other county and any court of this state receiving the documents and the district attorney have the same powers and duties under this act as if the documents had been originally addressed to them. When the clerk of a court of this state retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(c) If the district attorney has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

**Section 20. Court Procedure.**

The court shall conduct proceedings under this act in the manner prescribed by law for an action for the enforcement of the type of duty of support claims.

**Section 21. Continuance of Case.**

If the petitioner is absent from the responding state and the respondent presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

**Section 22. Husband and Wife Competent Witnesses.**

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

**Section 23. Rules of Evidence Applicable.**

In any hearing under this law, the court shall be bound by the same rules of evidence that bind the district court.

**Section 24. Court May Order Respondent to Furnish Support.**

If the court of the responding state finds a duty of support, it may order the respondent to furnish support or reimbursement therefore and subject the property of the respondent to such order. The court and district attorney of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where it was first issued. If enforcement is impossible or cannot be completed in the county where the order was issued, the district attorney shall transmit a certified copy of the order to the district attorney of any county where it appears that procedures to enforce payment of the amount due would be effective. The district attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceeding to the court first issuing the order.

**Section 25. Court to Transmit All Orders.**

The court of this state when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

**Section 26. Additional Powers of Court.**

In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its order and in particular:

(a) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent.

(b) To require the respondent to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary.

(c) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

**Section 27. Duties of Court — Responding State.**

The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court.

(a) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(b) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the respondent.

**Section 28. Duties of Court — Initiating State.**

The court of this state when acting as an initiating state shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the respondent or transmitted by the court of the responding state.

**Section 29. No Staying of Proceeding.**

No proceeding under this act shall be stayed because of the existence of a pending action for divorce, separation, annulment, dissolution or custody proceeding.

**Section 30. Order of Support Not to Supersede Previous Act.**

No order of support issued by a court of this state when acting as a responding state shall supersede any other order of support but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

**Section 31. Limitations — Court Jurisdiction.**

Participation in any proceedings under this act shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

**Section 32. Foreign Support Order.**

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

**Section 33. Remedies.**

The obligee may register the foreign support order in a court of this state in the manner, with the effect and for the purposes herein provided.

**Section 34. Registry of Foreign Support Orders.**

The clerk of the court shall maintain a Registry of foreign support order in which he shall record foreign support orders.

**Section 35. Petition to be Verified.**

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other states in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

**Section 36. Court Procedure.**

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

**Section 37. Support Orders — Procedure.**

The support orders as confirmed shall have the same effect and may be enforced as if originally entered in the court of this state. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the respondent for contempt as in the case of other orders for payment of alimony, maintenance or support entered in this state.

**Section 38. Savings Clause.**

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**Section 39. Purpose of Act.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**Section 40. Chapter Repealed.**

Chapter 61 of Title 77, Utah Code Annotated 1953, is repealed.

**Section 41. Uniform Reciprocal Enforcement of Support Act.**

This act may be cited as the Uniform Reciprocal Enforcement of Support Act of 1963.

Approved March 14, 1963.

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## JUDICIAL CODE

### CHAPTER 191

H. B. No. 17

(Passed February 5, 1963. In effect May 14, 1963)

#### DISTRICT JUDGE ACTING IN OTHER COUNTIES

**An Act Amending Section 78-3-13, Utah Code Annotated 1953, and Enacting Section 78-3-13.5, Utah Code Annotated 1953, relating to District Judges Acting in Other Counties; Providing for the Election of a Presiding District Judge and Assignment of District Judges to Assist in the Trial of Cases in Other Districts.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.****78-3-13. Judge May Sit in Another County on Request**

Section 78-3-13, Utah Code Annotated 1953, is amended to read:

Any district judge may hold a district court in any county at the request of the judge of the district or of the presiding district judge, and upon the request of the governor or the chief justice of the Supreme Court it shall be his duty to do so; and the judge holding the court shall have the same powers as the judge thereof.

**Section 2. Section Enacted.**

Section 78-3-13.5, Utah Code Annotated 1953, is enacted to read:

**78-3-13.5. Election of Presiding District Judge.**

Each year during the first week of July, the district judges of the state shall elect one of their number to serve as presiding district judge for a term of one year or until his successor is duly elected. Such election may be conducted by mail. It shall be the responsibility of the presiding district judge to acquaint himself with the work load of the judges in the respective districts. The county clerks and the respective judges shall furnish information regarding same upon the request of the presiding district judge. The presiding district judge shall make assignments of judges, where they are available for service in other districts to assist in the disposition of cases in those districts where the work load is heavier. The presiding district judge shall also attempt to formulate and encourage the adoption of uniform rules of court and procedure in the respective district courts. The presiding district judge shall act at all times under the supervision and direction of the chief justice of the Supreme Court.

Approved February 6, 1963.

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**CHAPTER 192**

S. B. No. 104.

(Passed March 12, 1963. In effect May 14, 1963.)

**MINOR PARENT ADOPTIONS**

**An Act Amending Section 78-30-4, Utah Code Annotated 1953, Relating to Consent to Adoption; Providing for Minor Parents Consenting to the Adoption of Their Children.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 78-30-4, Utah Code Annotated 1953, is amended to read:

**78-30-4. Consent to Adoption.**

A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessarily from a father or mother who has been judicially deprived of the custody of the child on account of cruelty, neglect or desertion; provided, that the district court may order the adoption of any child, without notice to or consent in court of the parent or parents thereof, whenever it shall appear that the parent or parents whose consent would otherwise be required have

theretofore, in writing, acknowledged before any officer authorized to take acknowledgments, released his or her or their control or custody of such child to any agency licensed to receive children for placement or adoption under Chapter 8 of Title 55, and such agency consents, in writing, to such adoption.

A minor parent shall have the power to consent to the adoption of such parent's child, and a minor parent shall have the power to release, such parent's control or custody of such parent's child to any agency licensed to receive children for placement or adoption under Chapter 8, Title 55; and, such a consent or release so executed shall be valid and have the same force and effect as a consent or release executed by an adult parent. A minor parent, having so executed a release or consent, cannot revoke the same upon such parent's attaining the age of majority.

Approved March 15, 1963.

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### CHAPTER 193

S. B. No. 155.

(Passed March 14, 1963. In effect May 14, 1963.)

#### COAL PIPE LINE EMINENT DOMAIN

**An Act Amending Section 78-34-1, Utah Code Annotated 1953, as Amended by Chapter 174, Laws of Utah 1957, Relating to Eminent Domain; Providing for Eminent Domain Regarding Coal Pipe Lines.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 78-34-1, Utah Code Annotated 1953, as amended by Chapter 174, Laws of Utah 1957, is amended to read:

#### **78-34-1. Uses for Which Right May be Exercised.**

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses;

- (1) All public uses authorized by the government of the United States.
- (2) Public buildings and grounds for the use of the state, and all other public uses authorized by the Legislature.
- (3) Public buildings and grounds for the use of any county, city or incorporated town, or board of education; reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city or incorporated town, or for the draining of any county, city or incorporated town; the raising of the banks of streams, removing obstructions therefrom, and widening, deeping or straightening their channels; roads, streets and alleys; and all other public uses for the benefit of any county, city or incorporated town, or the inhabitants thereof.
- (4) Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or road locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.
- (5) Reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for the supplying of persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic or



other uses, or for irrigation purposes, or for the draining and reclaiming of lands; or for the floating of logs and lumber on streams not navigable.

(6) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate the milling, smelting or other reduction of ores, or the working of mines, quarries, coal mines or mineral deposits; outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water from mills, smelters or other works for the reduction of ores, or from mines, quarries, coal mines or mineral deposits; mill dams; gas, oil or coal pipe lines, tanks or reservoirs; also any occupancy in common by the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter.

(7) Byroads leading from highways to residences and farms.

(8) Telegraph, telephone, electric light and electric power lines, and sites for electric light and power plants.

(9) Sewerage of any city or town, or of any settlement of not less than ten families, or of any public building belonging to the state, or of any college or university.

(10) Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery for the purpose of generating and transmitting electricity for power, light or heat.

(11) Cemeteries and public parks.

(12) Pipe lines for the purpose of conducting any and all liquids connected with the manufacture of beet sugar.

(13) Sites for mills, smelters or other works for the reduction of ores and necessary to the successful operation thereof, including the right to take lands for the discharge and natural distribution of smoke, fumes and dust therefrom, produced by the operation of such work; provided that the powers granted by this subdivision shall not be exercised in any county where the population exceeds twenty thousand, or within one mile of the limits of any city or incorporated town; nor unless the proposed condemner has the right to operate by purchase, option to purchase or easement, at least seventy-five per cent in value of land acreage owned by persons or corporations situated within a radius of four miles from the mill, smelter or other works for the reduction of ores; nor beyond the limits of said four-mile radius; nor as to lands covered by contracts, easements or agreements existing between the condemner and the owner of land within said limit and providing for the operation of such mill, smelter or other works for the reduction of ores; nor until an action shall have been commenced to restrain the operation of such mill, smelter or other works for the reduction of ores.

(14) Buildings, grounds, lands and rights of way for use of private educational institutions of collegiate grade within the State of Utah which are not conducted for profit and which admit all students of the state meeting the academic and moral standards of such educational institutions.

Approved March 19, 1963.

## CHAPTER 194

H. B. No. 25.

(Passed March 14, 1963. In effect May 14, 1963.)

**INCREASE BAR COMMISSION MEMBERS**

**An Act Amending Sections 78-51-2, 78-51-4, 78-51-6 and 78-51-7, Utah Code Annotated 1953, Relating to the Board of Commissioners of the Utah State Bar; Providing That the Number of Commissioners on Said Board be Increased to Nine, for the Election of Such Commissioners, and for the Office of President-Elect of the Utah State Bar.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 78-51-2, Utah Code Annotated 1953, is amended to read:

**78-51-2. Board of Commissioners—Number—Term—Vacancies.**

There shall be a board of commissioners of the Utah State Bar consisting of nine members. Except as otherwise provided in Section 78-51-6, the term of office of each commissioner shall be three years and until his successor is elected and qualified. In the event of a vacancy in the board the remaining commissioners shall appoint a successor from among the practicing members of the state bar of the division from which such commissioner was elected, who shall serve until the following annual election.

**Section 2. Section Amended.**

Section 78-51-4, Utah Code Annotated 1953, is amended to read:

**78-51-4. Number of Commissioners From Each Division.**

There shall be one member of the board of commissioners from each of said divisions; provided, that from the third division there shall be four commissioners; and no more than one commissioner from any division, except from the third division, and no more than four commissioners from it, shall serve on such board at the same time.

**Section 3. Section Amended.**

Section 78-51-6, Utah Code Annotated 1953, is amended to read:

**78-51-6. Election of Commissioners.**

The board of commissioners shall be elected by vote by ballot by the resident members of the Utah State bar as follows: in the year 1963 and every third year thereafter, one member from the first division and two members from the third division; in the year 1963, one member from the third division for a two year term only; in the year 1964 and every third year thereafter, one member from each of the fourth, fifth and sixth divisions; in the year 1965 and every third year thereafter, one member from the second division and two members from the third division. The candidate from any division, and the two candidates from the third division, receiving the greatest number of votes of that division shall be the commissioner from such division, but in the year 1963 the candidate from the third division receiving the third greatest number of votes shall be elected for a two year term only. Only residents of any division may vote for candidates for commissioner

from that division. The ballots shall be deposited in person or by mail with the secretary of the board, or such other officer as it may designate. There shall be an annual election by the resident members of the Utah State bar for the purpose of selecting successors to the commissioners whose terms expire and for the purpose of filling vacancies. The board shall fix the time for holding the annual election and prescribe rules and regulations in regard thereto not in conflict with the provisions of this title. The board shall, in accordance with its rules, give at least sixty days' notice by mail of the time for holding the election each year, but in the year 1963 only twenty days' notice need be given.

**Section 4. Section Amended.**

Section 78-51-7, Utah Code Annotated 1953, is amended to read:

**78-51-7. Organization of Board.**

After each election, the board shall organize by the election of a president-elect and a president of the Utah State bar. The president-elect shall be chosen from among the members of the board whose terms of office will not expire for two years or more. The president-elect for the previous year shall be elected president except that in the year 1963 the vice-president shall be elected president. The president and president-elect shall hold office until their successors are elected following the next succeeding annual election. A secretary and such other assistants as the board may require may be selected from within or without the board to hold office during the pleasure of the board and to be paid such compensation as the board shall determine.

Approved March 19, 1963.

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**CHAPTER 195**

H. B. No. 93

(Passed February 25, 1963. In Effect May 14, 1963)

**ACTIVE AND INACTIVE MEMBERS OF STATE BAR**

**An Act Amending Section 78-51-24, Utah Code Annotated 1953, Relating to Active and Inactive Members of the Utah State Bar; Providing an Increase in the Annual Membership Fee for Inactive Members of the Utah State Bar and Further Defining Inactive Members.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 78-51-24, Utah Code Annotated 1953, is amended to read:

**78-51-24. Active and Inactive Members of Bar.**

Any member of the Utah state bar, who has retired from the practice of law, or who is not engaged in the practice of law, upon written request, may be enrolled as an inactive member. No member of the Utah State Bar practicing law, or occupying a position in the employ of or rendering any legal service for an active member or occupying a position where he is called upon to give legal advice or counsel, or examine the law or pass upon the legal effect of an act, document or law, shall be enrolled as an inactive member. There shall be no rebate of

any license fee upon transfer from active to inactive membership after August 1, of the year in which the request is filed. An inactive member may attend the annual and special meetings, and participate in any debates or discussions at such meetings, may be appointed by the board of commissioners upon special committees, other than committees for examination of qualification for admission to practice and disciplinary committees, and may be employed in a clerical position by the Utah state bar, but shall not be entitled to vote at any election or upon any question. The annual membership fee for an inactive member shall be \$5.00, payable on or before April 1, of each year; provided, the board of commissioners shall have power to increase such fee to a sum not exceeding \$10.00. An inactive member may, if in good standing, upon his written request to the board of commissioners be enrolled as an active member. Upon the filing of such request and the payment of the full annual license fee for the current calendar year, less any membership fee paid by him as an inactive member for such year, the applicant shall be immediately transferred from the inactive roll to the active roll.

Approved February 27, 1963.

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## CHAPTER 196

H. B. No. 9.

(Passed March 11, 1963. In effect May 14, 1963.)

### PRACTICE OF LAW WITHOUT A LICENSE

**An Act Amending Section 78-51-25, Utah Code Annotated 1953, Relating to the Practice of Law Without a License; Providing for the Prohibition of Such Practice and for Enforcement.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 78-51-25 Utah Code Annotated 1953, is amended to read:

#### **78-51-25. Practicing Without a License — Penalty.**

No person who is not duly admitted and licensed to practice law within this state nor any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay his license fee or otherwise, shall practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer within the state. Such practice, or assumption to act or holding out, by any such unlicensed or disbarred or suspended person shall not constitute a crime, but this prohibition against the practice of law by any such person shall be enforced by such civil action or proceedings, including quo warranto, contempt or injunctive proceedings, as may be necessary and appropriate, which action or which proceedings shall be instituted by the Board of Commissioners of the Utah State Bar; providing, that in any action or proceeding to enforce the prohibition against the practice of law, the accused shall be entitled to a trial by jury.

Nothing in this section shall prohibit a person who is unlicensed as

an attorney from personally representing his own interests in a cause to which he is a party in his own right and not as assignee.

Approved March 16, 1963.

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## CHAPTER 197

S. B. No. 144.

(Passed March 14, 1963. In effect May 14, 1963.)

### COURT REPORTERS' SALARIES

**An Act Amending Section 78-56-3, Utah Code Annotated 1953, as Amended by Chapter 53, Laws of Utah 1955, Chapter 176, Laws of Utah 1957, and Chapter 182, Laws of Utah 1961, Relating to Salaries of Court Reporters.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Section Amended.**

Section 78-56-3, Utah Code Annotated 1953, as amended by Chapter 53, Laws of Utah 1955, Chapter 176, Laws of Utah 1957 and Chapter 182, Laws of Utah 1961, is amended to read:

#### **78-56-3. Compensation — Traveling Expenses — Payment.**

The compensation of a court reporter shall be fixed in accordance with salary schedules for state employees for attendance upon the sessions of the court. He shall also be paid for traveling expenses actually and necessarily incurred in the performance of his duties outside the county in which he resides. Such compensation and expenses shall be certified by the judge to the state auditor, who shall draw his warrant upon the state treasurer for the amount so certified, and the same shall be paid monthly out of the state treasury.

Approved March 19, 1963.

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## APPROPRIATIONS

### CHAPTER 158

H. B. No. 282.

(Passed March 14, 1963. In effect May 14, 1963.)

### APPROPRIATIONS ACT OF 1963

**An Act Making Appropriations for the Support of the Utah State Government for the Period Beginning July 1, 1963, and Ending June 30, 1965, and Setting Up Regulations and Restrictions Concerning Expenditures.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. Appropriations Act of 1963.**

(1) This act shall be known and may be cited as the "Appropriations Act of 1963." All sums of money appropriated by this act are, unless

otherwise herein specifically provided, for the period beginning July 1, 1963, and ending June 30, 1965.

(2) All of the moneys appropriated by this act are appropriated upon the terms and conditions as hereinafter set forth, and any department, agency or institution, except the legislature and its committees, which accepts moneys appropriated by this act does so subject to the terms and provisions of this act and all other statutes of the State of Utah.

#### **Section 2. Intent — Limitations.**

In providing that certain appropriations in Section 13 of this act are to be expended in accordance with a schedule or other restrictions, if any, set forth after each such appropriations item, it is the intent of the legislature to limit thereby the amount of money to be expended from each such appropriations item for certain specified purposes. Each such schedule in this act is a restriction or limitation upon the expenditure of the respective appropriation made by this act, does not itself appropriate any money, and is not itself an item of appropriation. No appropriation nor any surplus of any appropriation shall be diverted from any department, agency, institution or division to which it is by this act appropriated, to any other department, agency, institution or division, and the money appropriated, or so much thereof as may be necessary, shall, in those instances where a schedule or restriction is set forth, or prepared as herein provided, be used only for such purposes; except that the governing board of any post high school educational institution, subject to the provision of Chapter 40, Title 53, Utah Code Annotated 1953, and exempt under provisions of Section 63-2-38, Utah Code Annotated 1953, for which money is by this act appropriated may transfer monies from one classification or function to another classification or function within an item of appropriation for reasonable and necessary purposes by proper notification to the Governor through the fiscal office of such transfer and action of the governing board; and except that if any other department, agency or institution for which money is by this act appropriated shall request the transfer of monies appropriated to it from one classification or function to another classification or function within an item of appropriation, then the governor may, in his discretion, permit such a transfer. Under no circumstances shall any monies be transferred from one item of appropriation to any other item of appropriation.

#### **Section 3. No Duplications of Payment.**

No claim against the state, the payment of which is provided for in this act, shall be duplicated and the amount herein appropriated for the payment of any such claim shall be withheld if it is covered by an appropriation heretofore made, or by special law.

#### **Section 4. Transfer of Funds.**

Whenever appropriations are provided in this act to be made from special funds, the transfer of monies from such funds to the general fund or any other fund for budgetary purposes shall be made by the proper state fiscal officer, with the approval of the state auditor.

**Section 5. Salaries — Paid Semi-Monthly.**

Salaries of all state officers and employees shall be paid semi-monthly. Expenses of state officers and employees shall be paid at least monthly.

**Section 6. Processing of Warrants.**

(1) Except warrants for salaries or compensation of officers fixed by law, no warrant to cover any claim against any appropriation or fund shall be drawn until such claim has been processed as provided by law.

(2) The state treasurer shall return all redeemed warrants to the state fiscal officer for purposes of reconciliation, post-audit and verification of the state treasurer's fund balances. The fiscal officer shall return all redeemed warrants to the state auditor for post-auditing and filing.

**Section 7. Expenses — Mileage.**

Allowances out of any of the appropriations for travel made in this act, to any and all of the state institutions, departments, bureaus and agencies, to elected officials, appointed officers and employees for expenses on account of the use by any such elected official, appointed officer or employee of his personal automobile in the discharge of his official duties shall be seven cents per mile of actual travel.

**Section 8. Travel Outside of State.**

No claim shall be incurred for travel outside of the state, without the approval of the governor, secured in advance of such travel; except that this position shall not apply to the legislature and its committees.

**Section 9. Petty Cash and Revolving Funds.**

(1) It shall be the duty of the several commissions, departments and agencies of state government having petty cash, imprest cash, or revolving funds now established, to deposit the full amount thereof with the state treasurer on or before June 30, 1963, or within thirty days thereafter.

(2) Before any new petty cash funds shall be established, it shall be the duty of the commission, department or agency requesting such fund, or funds, to make application in writing to the state fiscal officer, setting forth the reasons therefor and stating the amount of and necessity for such fund.

(3) The state fiscal officer shall review such application and submit the same to the governor with his recommendations and the governor may establish such fund, or funds, from monies in the state treasury.

(4) All such funds established subsequent to July 1, 1963, shall be returned intact to the general fund or the fund from which such funds were established on or before June 30, 1965, or within thirty days thereafter.

(5) Revolving funds established for use of the Utah Water and Power Board shall not be subject to the provisions of this section.

**Section 10. Unexpended Balances.**

The state fiscal officer shall, on or before August 31, 1963, close out to the proper fund or account all unexpended balances of appropri-

ations made by the 34th legislature for the period from July 1, 1961 to June 30, 1963, except that the unexpended sums of money heretofore appropriated to the state building board for building, planning or construction purposes, the parks acquisition fund, the state armory board trust fund, the marking of graves trust fund, the prison revolving fund, the Utah Water and Power Board construction revolving fund and investigation fund, and the commission for adult blind revolving funds shall not lapse or be closed out. Claims for services, supplies and purchases which are due and payable from regular departmental appropriations made prior to June 30, 1963, but which are not paid before August 31, 1963, may be paid from regular departmental appropriations for the period beginning July 1, 1963, provided, such claims do not exceed unexpended balances of appropriations for the biennial period ending June 30, 1963.

#### **Section 11. Collections—Deposited Monthly.**

All departmental and institutional collections and dedicated credits which by law are required to be paid into the state treasury shall be deposited at least monthly and shall be credited by the proper state fiscal officer to the appropriations account of each department, institution, or agency responsible for such collections and dedicated credits to the extent and in such amounts as collected or as appropriated by section 13 of this act. Any excess collections and dedicated credits beyond the amount or amounts appropriated by section 13 of this act shall be credited by the proper state fiscal officer to the appropriations account for the department, institution or agency responsible for such collections and dedicated credits and shall be subject to expenditures by the department, institution or agency governing authority.

Collections or dedicated credits are by this act appropriated and shall be first allotted for expenditure to the extent of such appropriations. All collections and dedicated credits shall be subject to all provisions of law applicable to appropriated funds and shall be expended in accordance with an approved work program.

The provisions of this section shall not apply to federal funds or grants which by law or federal regulations are required to be retained or controlled exclusively by the department, institution or agency responsible for such funds or grants.

#### **Section 12. Rules and Regulations on Employment.**

The state personnel officer in the department of finance shall promulgate and publish rules and regulations regarding the conduct and employment of state officers and employees covering working hours, overtime, sick leave, vacations and other matters of personnel policy and enforce such rules and regulations uniformly in all state departments. The personnel officer shall adopt rules and regulations enforcing provisions with regard to the establishment of a uniform system of job classification and salary schedules for all state departments and institutions and shall have the power to initiate or alter such salary schedules. No such salary schedule shall be put into effect until approved by the governor.



**Section 13. Line Item Appropriations.**

The following sums of money, or so much thereof as may be necessary, are appropriated out of monies not otherwise appropriated from the funds herein indicated, for the use and support of the government of the State of Utah and for other purposes, as in this act and this section provided:

Item	1	To 36th Legislature — Senate and House From the General Fund .....	\$ 275,000.00
		Includes costs incurred for pre-filing bills as provided in S. B. 24 of the 35th Legislature.	
Item	2	To the Officers of the 35th Legislature — Interim Expenses From the General Fund .....	12,000.00
		For actual and necessary expenses of members of the Legislature to attend interstate meetings of the Council of State Governments and the National Legislative Leaders Conferences and for the payment of dues and for special committee expenses during the interim period from May 15, 1963 to January 15, 1965. The payment of expenses shall be upon approval of the President of the Senate and the Speaker of the House of the 35th Legislature, and such officers shall designate representation from the State of Utah from the membership of the Legislature to incur such expenses against the appropriation.	
Item	3	To Utah Legislative Council From the General Fund .....	100,000.00
		Schedule of Programs:	
		Administration & Research .....	\$ 93,000.00
		Committee Expenses .....	7,000.00
Item	4	To Utah Legislative Council — Study of Government Immunity — HJR 21 From the General Fund .....	25,000.00
Item	5	To Coordinating Council of Higher Education From the General Fund .....	116,000.00
Item	6	To Commission in Interstate Cooperation — Utah Interstate Commission for Cooperation in Higher Education From the General Fund .....	63,200.00
		Schedule of Programs:	
		Membership Fees..	20,000.00
		Student Exchange	43,200.00
Item	7	To Governor — Office Administration From the General Fund .....	130,600.00

Item 8	To Governor — Residence From the General Fund .....	43,000.00
Item 9	To Governor — Extradition of Fugitives From the General Fund .....	20,000.00
Item 10	To State Council of Defense From the General Fund .....	75,000.00
	From Dedicated Credits ..... \$ 65,000.00	
Item 11	To Utah Athletic Commission — Administration From the General Fund .....	1,500.00
	From Dedicated Credits ..... 300.00	
Item 12	To Governor — Sheriffs' Expenses — Delivery of Prisoners From the General Fund .....	1,500.00
Item 13	To Secretary of State — Administration From the General Fund .....	111,000.00
Item 14	To Secretary of State — Capitol Building and Grounds From the General Fund .....	800,000.00
	Includes \$20,000.00 for maintenance of Old City Hall.	
Item 15	To Secretary of State — Printing and Binding From the General Fund .....	20,000.00
Item 16	To Secretary of State — Bonds of Elective Officials From the General Fund .....	10,000.00
Item 17	To Secretary of State — Daughters of Utah Pioneers Relics Maintenance From the General Fund .....	5,000.00
Item 18	To Attorney General — Civil War Veterans From the General Fund .....	720.00
Item 19	To Attorney General — United Spanish- American War Veterans From the General Fund .....	3,000.00
Item 20	To Attorney General — Commission on Uniform State Laws From the General Fund .....	3,000.00
Item 21	To Attorney General — Administration From the General Fund .....	227,000.00
	From Department Collections .. 40,000.00	
	From Special Funds:	
	Motor Fuel Tax .....	80,000.00
	Land Grant Maintenance .....	20,000.00
	Fish & Game .....	26,000.00
	Uniform School .....	15,000.00
	State Insurance .....	10,000.00
	Liquor Control .....	10,000.00

	Financial Institutions .....	7,500.00	
	Oil & Gas Conservation .....	7,500.00	
	Aeronautics .....	4,000.00	
	Contractors .....	4,000.00	
	Boating .....	4,000.00	
	Public Service Commission....	4,000.00	
	Securities Commission .....	3,000.00	
Item 22	To State Auditor — Administration		
	From the General Fund .....		14,000.00
	From Special Funds:		
	Fish & Game.....	46,000.00	
	Liquor Control .....	46,000.00	
	Motor Fuel Taxes .....	40,000.00	
	Motor Vehicle Registration..	90,000.00	
	Motor Grant Maintenance ...	13,000.00	
Item 23	To State Auditor — Uniform Accounting		
	From the General Fund .....		45,000.00
	For uniform accounting systems of political subdivisions, including manuals, composite reports and supervision.		
Item 24	From the General Fund .....		21,500.00
to	From Special Funds:		
State	Motor Fuel Taxes .....	13,270.00	
Treasurer	Motor Vehicle Registration..	43,500.00	
Adminis-	Fish & Game .....	1,180.00	
tration	Liquor Control .....	20,400.00	
	Land Grant Maintenance ...	3,900.00	
	State Insurance Fund .....	18,250.00	
	Includes \$1,500.00 for computing machine.		
Item 25	To Finance Department		
	From the General Fund .....		174,800.00
	From Special Funds:		
	Motor Fuel Taxes .....	250,000.00	
	Fish & Game .....	75,000.00	
	State Insurance .....	30,000.00	
	Liquor Control .....	60,000.00	
	Motor Vehicle Registration...	84,000.00	
	Land Grant Maintenance ...	33,500.00	
	Uniform School .....	132,000.00	
	Financial Institutions Fees...	9,000.00	
	Oil & Gas Conservation .....	6,300.00	
	Aeronautics .....	5,000.00	
	Schedule of Programs:		
	Purchasing .....	167,300.00	
	Accounts &		
	Control .....	531,200.00	
	Personnel .....	53,600.00	
	Budgetary .....	101,500.00	

Item 26	To Finance Department — Fire Insurance From the General Fund .....	30,000.00
Item 27	To Finance Department — Jurors & Witness Fees From the General Fund .....	85,000.00
Item 28	To Finance Department — One-Half Cost — Maps & Plats From the General Fund .....	80,000.00
Item 29	To Finance Department — Council of State Governments From the General Fund .....	8,000.00
Item 30	To Business Regulations From the General Fund .....	109,200.00
	From Dedicated Credits .....	7,000.00
	From Special Funds:	
	Public Utility Regulation	
	Fees .....	194,000.00
	Motor Vehicle Registration....	70,500.00
	Securities Commission Fees..	50,700.00
	Registration .....	230,600.00
	Schedule of Programs:	
	Central Ad-	
	ministration ....	83,900.00
	Registration of	
	Trades &	
	Professions .....	221,200.00
	Securities	
	Commission .....	36,700.00
	Trades	
	Commission ....	14,300.00
	Public Service	
	Commission ....	205,400.00
	Inspections .....	100,500.00
Item 31	To Business Regulations — Public Service The Unexpended balance of appropriations made by the 34th Legislature as contained in Item 30, Section 13, Chapter 185, Laws of Utah 1961.	
Item 32	To Insurance Department — Administration From the General Fund .....	203,200.00
Item 33	To Industrial Commission — Administration From the General Fund .....	300,600.00
Item 34	To Apprenticeship Council — Administration From the General Fund .....	35,000.00

Item 35	To Department of Agriculture		
	From the General Fund .....		669,600.00
	Schedule of Programs:		
	Administration ..	271,600.00	
	Chemist .....	39,700.00	
	Weed & Seed .....	13,500.00	
	Marketing		
	Activities .....	22,400.00	
	Livestock .....	62,200.00	
	Dairy & Foods ....	204,200.00	
	Brucellosis .....	56,000.00	
Item 36	To Department of Agriculture —		
	Meat Inspection		
	From the General Fund .....		127,000.00
Item 37	To Department of Agriculture —		
	Soil Conservation		
	From the General Fund .....		29,500.00
Item 38	To Department of Agriculture —		
	Livestock Shows		
	From the General Fund .....		40,000.00
Item 39	To State Tax Commission		
	From the General Fund .....		946,400.00
	From Dedicated Credits .....	394,000.00	
	From Special Funds:		
	Motor Fuel Taxes .....	335,000.00	
	Motor Vehicle Registration ..	894,100.00	
	Motor Vehicle Control .....	590,000.00	
	Uniform School .....	1,327,900.00	
	Special Fuel Tax .....	88,000.00	
	Temporary Permit Fees .....	52,000.00	
	Aircraft Fuel .....	30,000.00	
	Schedule of Programs:		
	Administration ..	857,300.00	
	Accounting .....	271,600.00	
	Tabulating .....	444,300.00	
	General Files .....	282,300.00	
	Auditing .....	984,500.00	
	Property Tax .....	101,800.00	
	Valuation .....	452,000.00	
	Motor Vehicle .....	683,000.00	
	Excise Tax		
	Collection .....	334,700.00	
	Branch Offices ....	245,900.00	
Item 40	To State Tax Commission — Inheritance		
	Tax Appraiser' Fees		
	From the General Fund .....		35,000.00

Item 41	To State Historical Society		
	From the General Fund .....		127,000.00
	From Dedicated Credits .....	20,000.00	
	Schedule of Programs:		
	Administration ....	78,600.00	
	Librarian .....	45,400.00	
	Mansion		
	Maintenance .....	21,600.00	
Item 42	To State Historical Society —		
	Archives Department		
	From the General Fund .....		65,000.00
Item 43	To State Historical Society —		
	Military Records Section of Utah		
	Archives for Marking Graves		
	From the General Fund .....		21,500.00
Item 44	To State Fair Board		
	From the General Fund .....		80,000.00
	From Dedicated Credits .....	500,000.00	
	Schedule of Programs:		
	Administration .....	70,800.00	
	Board Expenses .....	16,000.00	
	Buildings & Grounds .....	130,000.00	
	State Fair .....	355,200.00	
	Special Events .....	8,000.00	
Item 45	To State Library Commission		
	From the General Fund .....		200,000.00
	From Dedicated Credits .....	262,000.00	
	Schedule of Programs:		
	Administration .....	86,300.00	
	Public Services .....	90,100.00	
	Extension & Bookmobiles.....	285,600.00	
Item 46	To State Library Commission —		
	Taping Books for the Blind		
	From the General Fund .....		20,000.00
Item 57	To Institute of Fine Arts — Administration		
	From the General Fund .....		37,000.00
Item 48	To Utah Tourist & Publicity Council		
	From the General Fund .....		114,000.00
	From Special Funds:....		
	Motor Fuel Taxes .....	225,000.00	
	Schedule of Programs:		
	Administration ..	39,000.00	
	Advertising .....	300,000.00	
Item 49	To State Park & Recreation Commission		
	From the General Fund .....		296,000.00
	From Dedicated Credits .....	4,000.00	
	Schedule of Programs:		
	Administration ..	125,400.00	

		Pioneer Monu- ment State Park .....	53,800.00	
		Fillmore State Park .....	15,300.00	
		Field House of Natural History .....	63,100.00	
		Other Park Areas .....	42,400.00	
Item	50	To Fish & Game Department — Administration & Services From the Fish & Game Fund ....		2,326,700.00
		Schedule of Programs:		
		Administration ..	309,400.00	
		Public Relations..	350,000.00	
		Law Enforce- ment .....	1,172,200.00	
		Fiscal & Accounting ....	205,800.00	
		Field Services.....	289,300.00	
Item	51	To Fish & Game Department — Fisheries Management From the Fish & Game Fund ....		2,004,700.00
Item	52	To Fish & Game Department — Game Management From the Fish & Game Fund ....		1,030,000.00
Item	53	To Fish & Game Department — Federal Aid From the Fish & Game Fund ....		956,000.00
		Schedule of Programs:		
		Field Services ....	75,600.00	
		Fisheries Management ..	158,000.00	
		Game Management ..	723,000.00	
Item	54	State Land Board From the Land Grant Maintenance Fund .....		225,000.00
		Schedule of Programs:		
		Administration ..	87,300.00	
		Accounting .....	39,700.00	
		Grazing .....	56,600.00	
		Minerals .....	41,400.00	
Item	55	To Forestry & Fire Control Board From the General Fund .....		50,000.00
		From Dedicated Credits .....	185,800.00	
Item	56	To Supreme Court — Administration From the General Fund .....		284,000.00

Item 57	To Supreme Court — Purchase of Utah Reports From the General Fund .....	7,000.00
Item 58	To Utah Code Compilation Commission From the General Fund .....	46,600.00
	To defray the cost of compiling, publishing and distributing supplements to the Utah Code Annotated 1953, and replacement of vol- umes of the Code if necessary. Such supple- ment shall include omissions from and errors in the Utah Code Annotated 1953, as deter- mined by the Commission. The Clerk of the Supreme Court shall make distribution of said supplements as provided for in Section 68-1- 6, Utah Code Annotated 1953.	
Item 59	To Utah Code Compilation Commission The unexpended balance of appropriations made by the 34th Legislature as contained in Item 60, Section 13, Chapter 185, Laws of Utah 1961.	
Item 60	To Finance Department — District Courts From the General Fund .....	967,200.00
Item 61	To Board of Corrections — Administration From the General Fund .....	37,300.00
Item 62	To Board of Corrections — Adult Probation & Parole From the General Fund .....	455,000.00
	Schedule of Programs:	
	Administration ..	150,900.00
	Investigation .....	304,100.00
Item 63	To State Board of Corrections — Board of Pardons From the General Fund .....	43,000.00
	Schedule of Programs:	
	Administration ..	36,100.00
	Board Expense ..	4,900.00
	Return of Parolees .....	2,000.00
Item 64	To Board of Corrections — State Prison From the General Fund .....	2,349,000.00
	From Dedicated Credits .....	347,400
	Schedule of Programs:	
	Administration ..	176,300.00
	Dietary Services	308,800.00
	Medical Services	120,600.00
	Maintenance .....	219,600.00



	Care &		
	Treatment .....	198,800.00	
	Custody .....	1,161,900.00	
	Outside Industry	212,400.00	
	Business Office..	219,000.00	
	Expansion of		
	Industry .....	47,000.00	
	Retirement Costs	32,000.00	
Item 65	To Adjutant General — National & State Guards		
	From the General Fund .....		116,000.00
	From Dedicated Credits .....	2,200.00	
	Schedule of Programs:		
	National Guard ..	115,400.00	
	State Guard .....	2,800.00	
Item 66	To State Armory Board — Armory Maintenance		
	From the General Fund .....		315,000.00
	From Dedicated Credits .....	152,000.00	
Item 67	To Department of Public Safety — Drivers' License Examinations		
	From Vehicle Control Drivers' License Fund .....	820,000.00	
	Schedule of Programs:		
	Administration ..	434,800.00	
	Field Examinations..	385,200.00	
Item 68	To Department of Public Safety — Driver Training Course (Construction Project)		
	From Vehicle Control Drivers' License Fund .....	80,000.00	
Item 69	To Department of Public Safety —Highway Patrol Administration & Operation		
	From Motor Fuel Tax Fund ....	3,303,200.00	
	From Dedicated Credits .....	261,900.00	
	Schedule of Programs:		
	Administration..	360,000.00	
	Communications	543,400.00	
	Field Operations ....	2,661,700.00	
Item 70	To Department of Public Safety — Checking Stations		
	From Motor Vehicle Registration Fund .....	375,000.00	
	From Motor Fuel Tax Fund .....	375,000.00	
Item 71	To Department of Public Safety — Safety Education & Promotion		
	From Motor Fuel Tax Fund ....	54,000.00	

Item 72	To Department of Public Safety — Safety & Financial Responsibility From Motor Vehicle Registration Fund .....	125,000.00	
Item 73	To Department of Public Safety — Criminal Identification Bureau From the General Fund .....		43,000.00
Item 74	To Department of Health.... From the General Fund .....		1,877,000.00
	From Dedicated Credits .....	80,000.00	
	Schedule of Programs:		
	Office of		
	Director .....	538,100.00	
	Laboratories ....	393,200.00	
	Medical Service .....	189,300.00	
	Vital Statistics..	117,600.00	
	Sanitation .....	240,100.00	
	Mental Health ..	57,600.00	
	Children's		
	Services .....	230,000.00	
	Dental Health....	36,300.00	
	Nursing .....	154,800.00	
Item 75	To Department of Health — Tuberculosis Drugs From the General Fund .....		34,000.00
Item 76	To Department of Health — Local Mental Health Clinics From the General Fund .....		147,000.00
Item 77	To Department of Health — Water Pollution Control From the General Fund .....		64,500.00
Item 78	To Public Welfare Commission — Public Assistance Payments From the General Fund .....		15,500,000.00
	From Dedicated Credits .....	775,000.00	
	Schedule of Programs:		
	Old Age		
	Assistance ....	2,331,400.00	
	Aid to Depend- ent Children..	5,287,500.00	
	Aid to Blind.....	123,400.00	
	Aid to Disabled	2,346,800.00	
	Medical Aid for the Aged .....	2,000,000.00	
	General		
	Assistance ....	3,130,800.00	
	Foster Care .....	1,055,100.00	

Item 79	To Public Welfare Commission — Administration From the General Fund .....	3,429,100.00
	Schedule of Programs:	
	Public Welfare Administration .....	2,405,600.00
	Child Welfare Services .....	900,000.00
	Commodity Distribution ..	123,500.00
Item 80	To Public Welfare Commission — Day Care Centers for Handicapped From the General Fund .....	282,500.00
Item 81	To Public Welfare Commission Committee on Youth From the General Fund .....	31,000.00
Item 82	To Public Welfare Commission — Committee on Aging From the General Fund .....	31,000.00
Item 83	To Juvenile Court — Administration From the General Fund .....	826,000.00
Item 84	To Public Welfare Commission — Detention of Children From the General Fund .....	250,000.00
	Schedule of Programs:	
	Administration..	11,900.00
	Grants-in-aid ....	238,100.00
Item 85	To Industrial School From the General Fund .....	1,740,000.00
	From Dedicated Credits .....	220,000.00
	Schedule of Programs:	
	Administration..	260,400.00
	Food Service ....	145,300.00
	Medical Service	44,600.00
	Buildings & Grounds .....	132,200.00
	Education & Recreation ....	216,500.00
	Group Living....	611,100.00
	Farm Operation	96,400.00
	Social Services..	82,700.00
	Clinical Services	20,800.00
	Apply to Exist- ing Programs	350,000.00

Item 86	To State Training School		
	From the General Fund .....		2,490,000.00
	From Dedicated Credits .....	590,000.00	
	Schedule of Programs:		
	Administration..	222,200.00	
	Dietary Service	253,800.00	
	Medical Care ....	234,700.00	
	Buildings & Grounds .....	298,800.00	
	Rehabilitation & Education ....	195,300.00	
	Resident Care....	1,630,700.00	
	Farm & Dairy..	222,500.00	
	Apply to Exist- ing Programs	22,000.00	
Item 87	To State Hospital		
	From the General Fund .....		4,688,000.00
	From Dedicated Credits .....	586,000.00	
	Schedule of Programs:		
	Administration..	290,000.00	
	Dietary Service	639,000.00	
	Patient Care.....	3,487,000.00	
	Buildings & Grounds .....	574,400.00	
	Laundry Services .....	71,200.00	
	Farm Operations ....	112,400.00	
	Children's Unit	100,000.00	
Item 88	To Public Welfare Commission — Tuberculosis Hospital, Patient Care or Alternate Use of Hospital		
	From the General Fund .....		400,000.00
	From Dedicated Credits .....	36,000.00	
	The Public Welfare Commission may expend this appropriation for patient care and serv- ices by contract and may operate hospital for other welfare uses if in the best interests of the state.		
Item 89	To Public Welfare Commission — Welfare Service Societies		
	From the General Fund .....		85,000.00
	Schedule of Programs:		
	Children's Aid Society .....	25,000.00	
	Children's Serv- ice Society.....	50,000.00	
	Neighborhood House .....	10,000.00	

Item 90	To State Board on Alcoholism		
	From the General Fund .....		276,000.00
	Schedule of Programs:		
	Administration..	101,600.00	
	Rehabilitation ..	174,400.00	
Item 91	To State Board of Education —		
	Public School Administration		
	From the Uniform School Fund	495,000.00	
	From Dedicated Credits .....	18,500.00	
	Schedule of Programs:		
	Administration..	233,700.00	
	Curriculum .....	141,000.00	
	Teacher		
	Personnel .....	71,000.00	
	Adult Education	27,500.00	
	Special		
	Education ....	36,300.00	
	Library Service	4,000.00	
Item 92	To State Board of Education —		
	Educational Television Programs		
	From the General Fund .....		35,000.00
	From Dedicated Credits .....	1,300.00	
Item 93	To State Board for Vocational Education —		
	Rehabilitation		
	From the General Fund .....		331,000.00
	From Dedicated Credits .....	831,500.00	
	Schedule of Programs:		
	Administration..	73,200.00	
	Guidance .....	487,800.00	
	Case Services ..	601,500.00	
Item 94	To State Board for Vocational Education —		
	Vocational Education		
	From the General Fund .....		270,000.00
	From Dedicated Credits .....	511,600.00	
	Schedule of Programs:		
	Administration..	55,300.00	
	Supervision .....	199,900.00	
	Allocations .....	446,400.00	
	Pilot Study.....	80,000.00	
Item 95	To Deaf & Blind School		
	From the General Fund .....		1,031,000.00
	From Dedicated Credits .....	198,000.00	
	Schedule of Programs:		
	Administration..	90,200.00	
	Board &		
	Lodging .....	190,900.00	
	Instruction .....	597,400.00	

	Building & Grounds .....	138,100.00	
	Apply to Exist- ing Programs	212,400.00	
Item 96	To Commissioner For Adult Blind From the General Fund .....		298,000.00
	From Dedicated Credits .....	3,200.00	
	Schedule of Programs:		
	Administration..	138,400.00	
	Home Teaching	135,600.00	
	Sight Conservation..	27,200.00	
Item 97	To University of Utah From the General Fund .....		14,792,000.00
	From Dedicated Credits .....	9,744,500.00	
	Schedule of Programs:		
	General Admin- tration .....	1,600,000.00	
	General In- stitutional Services .....	1,920,000.00	
	Resident Instruction .....	12,771,000.00	
	Extension .....	1,987,000.00	
	Libraries & Museum .....	1,110,000.00	
	Plant Operation	4,068,500.00	
	Organized Activity .....	1,080,000.00	
Item 98	To University of Utah — College of Medicine From the General Fund .....		2,227,300.00
	From Dedicated Credits .....	395,400.00	
Item 99	To University of Utah — Medicine Teaching Hospital From the General Fund .....		1,000,000.00
	From Dedicated Credits .....	3,093,000.00	
Item 100	To Geological & Mineralogical Survey From the General Fund .....		54,500.00
Item 101	To University of Utah — Television Station KUED From the General Fund .....		364,000.00
	Authority for allocation of time shall rest with the Utah Educational Television Foundation. The University of Utah Board of Regents may deny program time only if it would jeopardize the license.		
Item 102	To Utah State University From the General Fund .....		8,502,000.00

	From Dedicated Credits .....	3,881,300.00	
	Schedule of Programs:		
	General Adminis-		
	tration .....	589,000.00	
	General In-		
	stitutional		
	Services .....	900,000.00	
	Resident		
	Instruction ..	7,223,900.00	
	Extension .....	279,400.00	
	Library &		
	Museum .....	629,000.00	
	Plant Operation	2,218,000.00	
	Organized		
	Activity .....	544,000.00	
Item 103	To Utah State University — Television		
	Station KUSU		
	From the General Fund .....		42,000.00
	Authority for allocation of time shall rest with		
	the Utah Educational Television Foundation.		
	The University Board of Trustees may deny		
	program time only if it would jeopardize the		
	license.		
Item 104	To Utah State University — Water		
	Laboratory Administration		
	From the General Fund .....		45,000.00
Item 105	To Utah State University — Extension		
	Division		
	From the General Fund .....		1,210,000.00
	From Dedicated Credits .....	914,400.00	
	Schedule of Programs:		
	Administration..	1,109,500.00	
	County		
	Operations ....	915,200.00	
	Apply to Exist-		
	ing Programs	99,700.00	
Item 106	To Utah State University —		
	Experiment Station		
	From the General Fund .....		1,659,000.00
	From Dedicated Credits .....	1,824,000.00	
	Schedule of Programs:		
	Administration..	428,100.00	
	Animal Science	1,185,800.00	
	Forestry &		
	Engineering ..	347,900.00	
	Plant Science...	964,300.00	

	Social, Economic & Misc. ....	367,200.00	
	Apply to Exist- ing Programs	149,700.00	
	Study & Report Effects of Plant Growth on Water Yield from Sevier River Watershed ....	40,000.00	
Item 107	To College of Southern Utah From the General Fund .....		1,314,000.00
	From Dedicated Credits .....	410,000.00	
	Schedule of Programs:		
	General Ad- ministration ..	156,300.00	
	General In- stitutional Services .....	156,860.00	
	Resident Instruction ....	945,200.00	
	Extension .....	6,700.00	
	Library & Museum .....	71,520.00	
	Plant Operation	320,660.00	
	Organized Activity .....	55,760.00	
	Capital Outlay..	11,000.00	
Item 108	To Snow College From the General Fund .....		635,000.00
	From Dedicated Credits .....	167,800.00	
	Schedule of Programs:		
	General Ad- ministration ..	80,459.00	
	General In- stitutional Services .....	74,150.00	
	Resident Instruction ..	456,894.00	
	Library & Museum .....	29,334.00	
	Plant Operation	161,963.00	
Item 109	To Carbon College From the General Fund .....		610,000.00
	From Dedicated Credits .....	208,700.00	
	Schedule of Programs:		
	General Ad- ministration ..	69,000.00	



	General In-		
	stitutional		
	Services .....	46,000.00	
	Resident		
	Instruction ..	530,700.00	
	Library &		
	Museum .....	31,000.00	
	Plant Operation	130,000.00	
	Organized		
	Activity .....	12,000.00	
Item 110	To Dixie College		
	From the General Fund .....		486,000.00
	From Dedicated Credits .....	121,600.00	
	Schedule of Programs :		
	General Ad-		
	ministration ..	146,527.00	
	Resident		
	Instruction .....	328,073.00	
	Library &		
	Museum .....	29,000.00	
	Plant Operation	104,000.00	
Item 111	To Weber State College		
	From the General Fund .....		3,542,000.00
	From Dedicated Credits .....	1,481,500.00	
	Schedule of Programs :		
	General Ad-		
	ministration ..	377,000.00	
	General In-		
	structional		
	Services .....	631,000.00	
	Resident		
	Instruction ..	3,045,800.00	
	Library &		
	Museum .....	199,850.00	
	Plant Operation	643,000.00	
	Organized		
	Activity .....	126,850.	
Item 112	To State Board for Vocational Education —		
	Salt Lake Trade Technical Institute		
	From the General Fund .....		970,000.00
	From Dedicated Credits .....	413,200.00	
	Schedule of Programs :		
	General Ad-		
	ministration ..	37,794.00	
	General In-		
	structional		
	Services .....	137,820.00	
	Resident		
	Instruction ....	1,035,373.00	

	Library &		
	Museum .....	23,365.00	
	Plant Operation	129,800.00	
	Organized		
	Activity .....	19,048.00	
Item 113	To State Board for Vocational Education —		
	Utah Trade Technical Institute at Provo		
	From the General Fund .....		855,000.00
	From Dedicated Credits .....	509,000.00	
	Schedule of Programs:		
	General Ad-		
	ministration ..	75,080.00	
	General In-		
	structional		
	Services .....	83,285.00	
	Resident		
	Instruction ....	864,989.00	
	Library &		
	Museum .....	18,773.	
	Plant Operation	283,873.00	
	Organized		
	Activity .....	38,000.00	
Item 114	To State Road Commission		
	From Highway Construction &		
	Maintenance Fund .....	22,720,000.00	
	Schedule of Programs:		
	Administration..	3,703,900.00	
	Operation .....	5,708,600.00	
	Maintenance		
	Districts .....	2,757,500.00	
	Buildings .....	100,000.00	
	Construction of		
	Testing &		
	Sign Lab-		
	oratory .....	450,000.00	
Item 115	To State Road Commission		
	There is appropriated to the State Road Com-		
	mission, from funds in the Highway Main-		
	tenance and Construction Fund not otherwise		
	appropriated, a sum sufficient, but not more		
	than the surplus of the Highway Maintenance		
	and Construction Fund, to be used by the		
	State Road Commission to participate in and		
	cooperate with the federal government for the		
	construction of federal designated highways,		
	and the state highway system, as provided by		
	law, except, that no portion of the money ap-		
	propriated by this item shall be used, either		

directly or indirectly, to enhance or increase the appropriations otherwise made by this act to the Department of Engineering or the State Road Commission for other purposes.

Item 116	To State Road Commission It is hereby expressly provided that all monies received by the State Road Commission as reimbursements on cooperative agreements or from grants-in-aid from the federal government shall immediately, upon receipt thereof, be deposited with the State Treasurer to the credit of the State Highway Construction and Maintenance Fund, and no part thereof shall be credited to any operation for which appropriations are made in this act except as provided in Item No. 115.	
Item 117	To Aeronautics Commission — Civil Air Patrol From the General Fund .....	5,000.00
Item 118	To State Building Board From the General Fund .....	250,000.00
	Schedule of Programs:	
	Administration.. 200,000.00	
	Space Utilization .... 50,000.00	
Item 119	To State Engineer From the General Fund .....	1,101,000.00
	Schedule of Programs:	
	Administration.. 217,400.00	
	Water Rights .. 469,400.00	
	Water Resources .... 414,200.00	
Item 120	To Water & Power Board From the General Fund .....	311,000.00
	Schedule of Programs:	
	Administration.. 191,800.00	
	Board Expenses 12,000.00	
	Investigation .... 107,200.00	
Item 121	To Water & Power Board — Defending Water Rights From the General Fund .....	10,000.00
Item 122	To Liquor Control Commission From the Liquor Control Fund..	2,746,000.00
	Schedule of Programs:	
	Administration.. 102,100.00	
	Accounting ..... 258,000.00	
	Purchasing ..... 53,000.00	

Warehousing ....	275,000.00
Stores & Agencies .....	1,959,500.00
Supply Room ....	58,000.00

Item 123 There is appropriated to the Liquor Control Commission from monies in the Liquor Control Fund not otherwise appropriated, a sum sufficient for the purchase and payment of liquor, including freight and federal taxes thereon, except, that at no time shall such purchases or commitments to purchase exceed the current unencumbered balance of the Liquor Control Fund; and it is further provided that no money appropriated by this item shall be used to increase or enhance, directly or indirectly, any other appropriation made by this act for other purposes.

Item 124 To the General Fund for Capitol Building & Grounds Maintenance

From Special Funds:

Motor Fuel Tax .....	39,100.00
Uniform School .....	19,500.00
Motor Vehicle Registration ..	24,200.00
Land Grant Maintenance .....	10,600.00
Insurance .....	12,900.00
Motor Vehicle Control .....	14,100.00
Vehicle Control .....	8,100.00
Financial Institutions .....	3,500.00
Public Utility Regulation .....	18,000.00

Item 125 To Attorney General — Miscellaneous Claims  
The Attorney General shall deliver warrants against the following appropriations only upon a complete release by all parties to each claim for present and future damage, where such is involved, executed to the State of Utah upon forms prescribed by the Attorney General.

From the General Fund ..... 4,027.02

Schedule of Claims:

Continental Oil Company, Denver, Colorado .....	23.44
Harold L. Grimaud, Midvale	145.10
Prescription Center, Ogden....	46.86
Ralph W. Pugmire, Ogden....	24.00
Magic Chemical Co., Salt Lake .....	120.00
Standard Oil of California, Salt Lake City .....	14.84

Tippetts Garbage Service, Salt Lake City .....	163.00	
Sinclair Refining Company, Kansas City, Missouri .....	5.44	
Standard Supply Company Salt Lake City .....	157.50	
Owen P. Heninger, M.D., Provo .....	400.00	
Herman Young, Mona .....	1,200.00	
Wasatch County, Heber .....	195.00	
Weber County Chronic Disease Hospital, Roy .....	90.00	
Donna Z. Evans, Lehi .....	430.00	
LaMar Petersen, Salt Lake....	230.50	
Don B. Lindgren, c/o Mabey, Ronnnow & Madsen, Salt Lake City .....	700.00	
Utah Oil Refining Company, Salt Lake City .....	81.34	
From Highway Construction Fund .....		9,167.34
Schedule of Claims :		
Devere Gates, Escalante .....	55.00	
Ken's Standard Station, Evanston, Wyoming .....	4.00	
Daily Herald, Provo .....	29.70	
Western Machinery, Salt Lake City .....	2,130.66	
Chase Shurtz, Escalante .....	45.00	
Ralph & Angelina Florin, Salt Lake City .....	3,500.00	
Mary Sanborn, Salt Lake.....	80.00	
E. R. Ortize, Salt Lake.....	20.00	
Carl W. Rollins, c/o Leon Frazier, Provo .....	1,381.00	
Oscar Padgett, Columbia.....	581.98	
Ronald A. Sartori, Salt Lake City .....	1,300.00	
Etta & L. O. Bekkmellon, Salt Lake City .....	10.00	
Etta & L. O. Bekkmellon, Salt Lake City .....	30.00	
From Fish & Game Reserve Fund .....		831.70
Schedule of Claims :		
Horace B. Mullins, Salt Lake	500.00	
W. Dale Bingham, Roy .....	316.00	
GarKane Power Assn., Inc., Richfield .....	15.70	
From Land Maintenance Fund .....		95.34

	Schedule of Claims:		
	B. H. Stringham, Vernal .....	95.34	
	From Liquor Control Fund .....		6.86
	Schedule of Claims:		
	B. G. Clay, Salt Lake City ....	6.86	
	From Motor Fuel Tax Fund .....		1,215.50
	Schedule of Claims:		
	Texaco, Inc., Chicago,		
	Illinois .....	4.79	
	Phillips Petroleum, Kansas		
	City, Missouri .....	973.02	
	Mobil Oil Company, Los		
	Angeles, California .....	50.05	
	Sinclair Refining Company,		
	Kansas City, Missouri .....	5.35	
	American Oil Company,		
	Chicago, Illinois .....	182.29	
Item 126	To State Parks & Recreation Commission —		
	Park Acquisition, Development &		
	Loan Repayment		
	From the General Fund .....		400,000.00
Item 127	To Governor — Governor's Contingency		
	From the General Fund .....		10,000.00
Item 128	To Deficit Appropriations Allowed by the		
	Board of Examiners Pursuant to Sections		
	63-6-19 and 63-6-20, Utah Code Annotated 1953		
	From the General Fund .....		126,007.88
	Schedule of Deficits:		
	Governor —		
	Residence .....	7/19/61	\$1,000.00
	Extradition of		
	Fugitives .....	5/ 9/61	3,500.00
	Secretary of State		
	Capitol Buildings &		
	Grounds .....	5/24/61	5,000.00
	Capitol Buildings &		
	Grounds .....	7/10/61	15,000.00
	Printing & Binding ..	6/27/61	10,000.00
	State Board of		
	Education		
	Vocational		
	Rehabilitation .....	8/31/61	1,137.34
	Adult Probation &		
	Parole .....	8/21/61	546.33
	State Armory Board		
	Armory Maintenance	6/27/61	2,307.84
	Finance Commission		
	Fire Insurance —		
	State Buildings ....	6/27/61	4,734.13

District Courts .....	8/ 9/61	3,500.00	
One-Half Cost Maps & Plats .....		45,860.79	
Business Regulations			
Administration .....	5/15/61	8,301.88	
Administration .....	6/ 6/61	3,000.00	
Board of Agriculture			
Meat Inspection .....	6/27/61	10,000.00	
Tax Commission			
Inheritance Tax			
Appraisers .....	5/31/61	5,000.00	
Board of Forestry & Fire Control			
Fire Suppression.....	6/30/61	2,915.50	
Water & Power Board			
Administration .....	6/30/61	2,872.87	
Administration .....	8/ 9/61	1,331.00	
From the Liquor Control Fund .....			7,000.00
Schedule of Deficits:			
Liquor Control Commission			
Administration ....	6/30/61	7,000.00	

#### Section 14. Yearly and Quarterly Allotments.

The amount appropriated in Sections 11 and 13 of this act represent the complete appropriation expenditure authorized for the department concerned, unless otherwise provided. The budget of each department shall conform with the program of expenditures approved by the joint appropriations committee as included in reports submitted by the subcommittees on appropriations relating to programs, functions, divisions and object of expenditures. Each department shall make such modifications in its administrative practices and changes in its various accounts and programs, including personal services, travel, current expenses, capital outlay, and such other expenditures in its operation, as required to keep within its appropriations. For the fiscal year ending June 30, 1965, no department shall exceed fifty per cent of its appropriation for recurring expenditures. No department shall receive any advance allotment or allotments in excess of regular quarterly allotments which cannot be covered within the fiscal year work program, except as provided in Section 15 of this act. When the amount appropriated is less than requested, or less than proposed for its budget, said department shall consult its governing board, or, if none, the governor (provided the legislature is not in session) to determine what modification, if any, shall be necessary in its budget. These may include curtailment or elimination of present or proposed programs.

#### Section 15. Emergency Fund — Governor.

There is appropriated to the governor from the general fund the sum of \$300,000, or so much thereof as may be necessary, for the purpose of meeting extraordinary emergencies which may occur and which

require deficit expenditures in excess of funds appropriated by this act and for those purposes for which funds are appropriated by this act. The appropriation herein shall represent the maximum deficit appropriation permitted by law from the general fund.

#### **Section 16. Uniform School Fund Appropriation.**

There is appropriated from the general fund to the uniform school fund to assist in financing the state's portion of the minimum school program as provided by law, the following sum:

For the period July 1, 1963 to June 30, 1965, \$36,000,000.

Provided, that if revenues to the general fund are not sufficient to permit transfers to the uniform school fund as herein provided by appropriation, the state fiscal officers, with the approval of the governor, shall withhold such transfers during the period July 1, 1963 to June 30, 1965, as in their judgment the available revenues justify, after other appropriations made by law have been provided for; and provided further, that transfers to the uniform school fund shall be made at such times as required to equalize the property levy for each fiscal year to the extent possible.

#### **Section 17. Savings Clause.**

If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Approved March 22, 1963.

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### **CHAPTER 199**

S. B. No. 86.

(Passed March 14, 1963. In effect March 18, 1963.)

#### **APPROPRIATION TO WATER AND POWER BOARD**

**An Act Appropriating \$1,000,000.00 From the State General Fund to the Utah Water and Power Board Loan Fund.**

*Be it enacted by the Legislature of the State of Utah:*

#### **Section 1. \$1,000,000.00 Appropriated.**

There is appropriated out of the general fund not otherwise appropriated, the sum of \$1,000,000.00 to the Utah water and power board as a permanent increase to the loan fund of Utah water and power board.

#### **Section 2. Effective Date.**

This act shall take effect upon approval.

Approved March 18, 1963.



## CHAPTER 200

S. B. No. 227.

(Passed March 14, 1963. In effect March 18, 1963.)

## SUPPLEMENTAL APPROPRIATION FOR BIENNIUM

ENDING JUNE 30, 1963

**An Act Appropriating \$34,000.00 to the Secretary of State, Building and Ground Account No. 100-05-02, to Provide for Maintenance, Utilities, General Upkeep, Sprinkling System, Landscaping and Miscellaneous Improvements of the Pioneer City Hall; and Providing an Emergency Clause.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. \$34,000.00 Appropriated.**

There is appropriated to the Secretary of State, building and grounds account No. 100-05-02, the sum of \$34,000.00 from the general fund, not otherwise appropriated, to provide for maintenance, utilities, general upkeep, sprinkling system, landscaping and miscellaneous improvements for the Pioneer City Hall from March 1, 1963, to June 30, 1963.

**Section 2. Effective Date.**

This act shall take effect upon approval.

Approved March 18, 1963.

## CHAPTER 201

H. B. No. 278.

(Passed March 14, 1963. In effect March 21, 1963.)

## APPROPRIATIONS FOR BIENNIUM ENDING JUNE 30, 1963

**An Act Making Appropriations for the Biennium Ending June 30, 1963, in Addition to Appropriations Made in Section 13, Chapter 185, and Section 18, Chapter 186, Laws of Utah 1961, to Certain Departments or Agencies of State Government.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Funds Appropriated.**

The following sums of money, or so much thereof as may be necessary, are appropriated out of monies not otherwise appropriated from the funds indicated, in addition to appropriations, if any, made in Section 13, Chapter 185 and Section 18, Chapter 186, Laws of Utah 1961, for the use and support of certain state departments and agencies, and for other purposes, as in this act and this section provided:

Item 1	Legislature — Senate and House Overdraft	
	From the General Fund .....	\$ 42,086.05
Item 2	Finance Commission — Jurors and Witness Fees	
	From the General Fund .....	19,370.00
Item 3	Finance Commission — One Half Cost Maps and Plats	
	From the General Fund .....	20,000.00

Item 4	Finance Commission — Public Employees Retirement Act		
	From the General Fund .....	\$55,000.00	
	From the Motor Fuel Tax .....	65,000.00	
	From the State Insurance Fund .....	15,000.00	
	From the Vehicle Control Fund .....	20,000.00	
			155,000.00
Item 5	Department of Public Safety — Drivers License Administration		
	From the Vehicle Control Fund .....	40,000.00	
Item 6	Liquor Control Commission — Administration		
	From the Liquor Control Fund .....	275,000.00	
Item 7	Finance Commission — Administration		
	From the Motor Fuel Tax.....	12,500.00	
	From the Uniform School Fund .....	12,500.00	
			25,000.00

**Section 2. Effective Date.**

This act shall take effect upon approval.  
Approved March 21, 1963.

**CHAPTER 202**

H. B. No. 279.

(Passed March 14, 1963. In effect March 21, 1963.)

**APPROPRIATION TO TAX COMMISSION**

**An Act Appropriating to the State Tax Commission from the General Fund \$9,000, or so Much Thereof as May be Necessary in Addition to Appropriation Made in Chapter 185, Laws of Utah 1961, for Inheritance Tax Appraiser's Fees for the Biennium Ending June 30, 1963.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. \$9,000.00 Appropriated.**

There is appropriated from the general fund, from funds not otherwise appropriated, \$9,000, or so such thereof as may be necessary, to the state tax commission for Inheritance Tax Appraiser's Fees, in addition to the amount appropriated by Chapter 185, Laws of Utah 1961, for the period ending June 30, 1963.

**Section 2. Effective Date.**

This Act shall take effect upon approval.  
Approved March 21, 1963.

**CHAPTER 203**

H. B. No. 15

(Passed February 14, 1963. In effect May 14, 1963)

**NATIONAL DEFENSE APPROPRIATION**

**An Act Appropriating \$110,000 to the State Board of Education to Provide Matching Funds to Carry Out the Provisions of Titles III, V (A), and X of Public Law 85-864, as Amended by Public Law 87-344.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Appropriation to State Board of Education**

There is appropriated to the state board of education from the general fund, from funds not otherwise appropriated, for the purpose of continuing to carry out the provisions of Public Law 85-864, known as "The National Defense Education Act of 1958", as amended by Public Law 87-344, \$110,000 to be used for matching funds for state supervision and administrative cost, and for the purpose of supplementing, as may be necessary, local district funds to assure sufficient required matching funds under the provisions of Titles III, V (A), and X of Public Law 85-864, as amended by Public Law 87-344. These funds shall remain available until June 30, 1965.

Approved February 14, 1963.

**CHAPTER 204**

H. B. No. 21

(Passed February 15, 1963. In effect May 14, 1963)

**APPROPRIATION TO DEPARTMENT OF AGRICULTURE**

**An Act Appropriating \$66,000 to the State Department of Agriculture to Administer the Meat Inspection Act, Chapter 27 of Title 4, Utah Code Annotated 1953, as Enacted by Chapter 5, Laws of Utah 1959, and as Amended by H. B. 20, 1963.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Appropriation—Meat Inspection Act.**

There is appropriated to the state department of agriculture from the general fund, from funds not otherwise appropriated, the sum of \$66,000 for the purpose of administering the Meat Inspection Act, Chapter 27, of Title 4, Utah Code Annotated 1953, as enacted by Chapter 5, Laws of Utah 1959, and as amended by H. B. 20, Utah Legislature 1963. All or part of said appropriation may be used by said department for the biennium beginning July 1, 1963.

Approved February 15, 1963.

**CHAPTER 205**

H. B. No. 29

(Passed February 25, 1963. In Effect February 27, 1963)

**APPROPRIATIONS FOR BRUCELLOSIS CONTROL**

**An Act Relating to Brucellosis Eradication and Control, Appropriating \$36,000 from the General Fund to the State Department of Agriculture to Reinstate the Accelerated Brucellosis Eradication Program.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Appropriation of \$36,000—Department of Agriculture.**

There is appropriated to the state department of agriculture from the general fund, from funds not otherwise appropriated, the sum of \$36,000 to enable said department to continue its participation in an accelerated program for brucellosis eradication and to obtain federal-aid funds until the end of the fiscal year ending June 30, 1963, said funds to be made available immediately.

**Section 2. Emergency Clause.**

This act shall take effect upon approval.

Approved—February 27, 1963.

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## RESOLUTIONS

### ELECTORAL COLLEGE

H. C. R. No. 1.

(Passed March 7, 1963.)

**A Concurrent Resolution of the Senate and House of Representatives of the 35th Legislature of the State of Utah Petitioning the Congress of the United States to Call a Convention for Proposing an Amendment to the Constitution of the United States, Unless Congress Shall Have Submitted Such an Amendment, to Provide for the Election of the President and Vice President in a Manner Fair and Just to the People of the United States.**

*Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:*

WHEREAS, under the Constitution of the United States Presidential and Vice Presidential Electors in the several states are now elected on a statewide basis, each state being entitled to as many electors as it has senators and representatives in Congress; and

WHEREAS, the Presidential and Vice Presidential Electors who receive the plurality of the popular vote in a particular state become entitled to cast the total number of electoral votes allocated to the state irrespective of how many votes may have been cast for other Elector candidates; and

WHEREAS, this method of electing the President and Vice President is unfair and unjust in that it does not reflect the minority votes cast; and

WHEREAS, the need for a change has been recognized by members of Congress on numerous occasions through the introductions of various proposals for amending the Constitution;

NOW, THEREFORE, BE IT RESOLVED, that application is hereby made to Congress under Article V of the Constitution of the United States for the calling of a Convention to propose an Article of Amendment to the Constitution providing for a fair and just division of the electoral votes within the States in the election of the President and Vice President, and be it further

RESOLVED, that if and when Congress shall have proposed such an article of Amendment this application for a Convention shall be deemed withdrawn and shall be no longer of any force and effect; and be it further

RESOLVED, that the proper officer of this State be and he hereby is directed to transmit copies of this application to the Senate and House of Representatives of the United States, and to the several members of said bodies representing this State therein; also to transmit copies hereof to the Legislatures of all other States of the United States.

### LEGISLATIVE SALARIES

S. J. R. No. 1.

(Passed January 23, 1963.)

#### A Resolution Fixing Compensation of Officers and Employees of the Thirty-Fifth Legislature of Utah.

*Be it resolved by the Legislature of the State of Utah:*

WHEREAS, the Legislature of the State of Utah, acting under and by virtue of Section 36-2-2, Utah Code Annotated 1953, is empowered to fix the compensation of officers and employees of the Legislature;

NOW, THEREFORE, BE IT RESOLVED that the compensation of the officers and employees of the Thirty-Fifth Legislature be fixed as follows:

Secretary of the Senate and Chief Clerk of the

House of Representatives .....	\$18.00 per day
Reference Attorney .....	17.00 per day
Assistant Reference Attorney .....	17.00 per day
Minute Clerks .....	15.00 per day
Docket Clerks .....	15.00 per day
Reading Clerks .....	15.00 per day
Assistant Reading Clerks .....	15.00 per day
Sergeant-at-Arms .....	16.00 per day
Assistant Sergeant-at-Arms .....	12.00 per day
Supervising Stenographer .....	14.00 per day
Assistant Supervising Stenographer .....	13.50 per day
Committee Clerks .....	12.50 per day
Engrossing Clerks .....	11.00 per day
Stenographers .....	12.00 per day
Mailing Clerks .....	10.50 per day
Messengers .....	10.50 per day
Chaplain .....	10.50 per day
Doormen .....	10.50 per day
All other employees .....	10.50 per day

Said salaries to be paid semi-monthly.

BE IT FURTHER RESOLVED that no change in the schedule of compensation as contained in this resolution, shall be made, either as bonus payments or any other types of compensation for officers and employees, except, such proposed change be first submitted to the Joint Committee on Contingent Expenses for the Senate and the House.

### ANTI-POLL TAX AMENDMENT

S. J. R. No. 2.

(Passed February 25, 1963.)

#### A Joint Resolution of the Legislature of the State of Utah to Ratify a Proposed Amendment to the Constitution of the United States.

*Be it resolved by the Legislature of the State of Utah:*

WHEREAS, the 87th Congress of the United States of America, at its 2nd session, in both Houses, by a constitutional majority of two-

thirds thereof, adopted the following proposition to amend the Constitution of the United States of America :

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by Congress :

'Article .....

'Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

'Section 2. The congress shall have power to enforce this article by appropriate legislation.'

Resolved by the Senate and House of Representatives of the State of Utah, That the said proposed amendment to the Constitution of the United States of America, be and the same is hereby ratified; and be it further

Resolved, that certified copies of this Resolution shall be forwarded by the Governor of Utah to the Administrator of General Services, United States Government, Washington, D. C., to the President of the Senate of the United States, and to the Speaker of the House of Representatives of the United States.

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### FREEPORT AMENDMENT

S. J. R. No. 5.

(Passed March 13, 1963.)

**A Joint Resolution Proposing to Amend Article XIII, Section 2, of the Constitution of the State of Utah, Relating to an Ad Valorem Tax Exemption; Providing That Tangible Personal Property Which is Shipped Beyond the State of Utah Within a Period of One Year may be Exempted from Ad Valorem Tax.**

*Be it resolved by the Legislature of the State of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to amend Article XIII, Section 2 of the Constitution of the State of Utah to read as follows :

Section 2. All tangible property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The property of the state, counties, cities, towns, school districts, municipal corporations and public libraries, lots with the buildings thereon used exclusively for either religious worship or charitable purposes, and places

of burial not held or used for private or corporate benefit, shall be exempt from taxation. Tangible personal property present in Utah on January 1, m., which is held for sale or processing and which is shipped to final destination outside this state within 12 months may be deemed by law to have acquired no situs in Utah for purposes of ad valorem property taxation and may be exempted by law from such taxation, whether manufactured, processed or produced or otherwise originating within or without the state. Water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes and flumes owned and used by individuals or corporations for irrigating land within the state owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purposes. Power plants, power transmission lines and other property used for generating and delivering electrical power, a portion of which is used for furnishing power for pumping water for irrigation purposes on lands in the state of Utah, may be exempted from taxation to the extent that such property is used for such purposes. These exemptions shall accrue to the benefit of the users of water so pumped under such regulations as the legislature may prescribe. The taxes of the indigent poor may be remitted or abated at such times and in such manner as may be provided by law. The legislature may provide for the exemption from taxation of homes, homesteads, and personal property, not to exceed \$2,000 in value for homes and homesteads, and all household furnishings, furniture, and equipment used exclusively by the owner thereof at his place of abode in maintaining a home for himself and family. Property not to exceed \$3,000 in value, owned by disabled persons who served in any war in the military service of the United States or of the state of Utah and by the unmarried widows and minor orphans of such disabled persons or of persons who while serving in the military service of the United States or the state of Utah were killed in action or died as a result of such service may be exempted as the legislature may provide.

The legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. For the purpose of paying the state debt, if any there be, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and to pay the principal of such debt, within twenty years from the final passage of the law creating the debt.

Section 3. The secretary of state is directed to submit this proposed amendment to the electors of the state of Utah at the next general election in the manner provided by law.

Section 4. If adopted by the electors of this state, this amendment shall take effect upon January 1, 1965.

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#### POWER TO APPORTION MEMBERSHIP IN LEGISLATURES

S. J. R. No. 7.

(Passed February 15, 1963.)

**A Joint Resolution of the Senate and House of Representatives of the State of Utah Memorializing the Congress of the United States to Provide Legislation Designed to Preserve to the Respective States Their Power to Apportion Among Their Citizens Their Representation in the Various State Legislatures.**

*Be it resolved by the Legislature of the State of Utah:*

WHEREAS, the representation enjoyed by the citizens of the State of Utah, as well as by the citizens of the various States of the Union in their respective State Legislatures, is best determined by consideration of local importance; and

WHEREAS, the Court of the United States are construing the Constitution of the United States so broadly as to empower them to intervene in the rights of the respective states to determine the membership of their respective Legislatures; and

WHEREAS, it is the considered opinion of this Legislature that the power of determination of problems relating to apportionment of legislative representation is best exercised by the direct representatives of the people of the States.

NOW, THEREFORE, BE IT RESOLVED, by the Legislature of the State of Utah, that it is fitting and proper for the citizens of this State and of their representatives in the Legislature of the State of Utah to determine the membership of their Senate and of their House of Representatives, and to apportion representation therein among the various portions of the State; and

BE IT FURTHER RESOLVED, that the Secretary of State of the legislative determination and apportionment therein is best exercised by the people and the legislatures of the respective States of the Union.

BE IT FURTHER RESOLVED, that we respectfully petition the Congress of the United States to take all necessary legislative steps including the possibility of initiating a constitutional amendment to protect and preserve the powers of the various states of the Union to determine the membership of their respective legislatures and the apportionment of representation therein.

BE IT FURTHER RESOLVED, that the Secretary of State of the State of Utah is hereby authorized and directed to send copies of this Memorial to the Senate and to the House of Representatives of the United States and to the Senators and Congressmen representing the State of Utah in the National Congress.

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### SUCCESSION OF PUBLIC OFFICERS DURING EMERGENCIES

S. J. R. No. 11

(Passed March 14, 1963.)

**A Joint Resolution Proposing to Add Section 32 to Article VI of the Constitution of the State of Utah, Relating to Temporary Succession to the Powers and Duties of Public Officers in Periods of Emergency Resulting from Disaster Caused by Enemy Attack.**

*Be it resolved by the Legislature of the State of Utah, two-thirds of the members elected to each of the two houses voting in favor thereof:*

Section 1. It is proposed to amend Article VI of the Constitution of the State of Utah by adding Section 32, to read as follows:



Section 32. Notwithstanding any general or special provisions of the Constitution, the Legislature in order to insure continuity of state and local government operations in periods of emergency resulting from disaster caused by enemy attack shall have the power and immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such measures as may be necessary and proper for insuring the continuity of governmental operations including, but not limited to, the financing thereof; but subsections 1 and 2 of this section shall not permit the public officers so appointed to act or the measures so adopted to be in contravention of the Constitution and applicable law.

Section 2. The secretary of state is directed to submit this proposed amendment to the electors of the State of Utah at the next general election in the manner provided by law.

Section 3. If adopted by the electors of this state, this amendment shall take effect the first day of January, 1964.

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### WATERSHED PROTECTION

S. J. R. No. 12

(Passed March 14, 1963.)

**A Joint Resolution of the Senate and House of Representatives of the State of Utah Calling for Cooperation Among the Various Local, State and Federal Agencies, and All Other Groups Concerned, in the Study of Problems Involving the Best Allocation of Use of Our Water Resources.**

*Be it resolved by the Legislature of the State of Utah:*

WHEREAS, water is one of the most important resources possessed and enjoyed by the citizens of the State of Utah as well as by the citizens of the various states of the Union; and

WHEREAS, the preservation of this important resource of water is most desirable and to the benefit of all the citizens of the state; and

WHEREAS, there is a definite relationship between the amount of water coming off a watershed, and the types and amounts of vegetation on a watershed, and the nature and amounts of grazing allowed on a watershed;

NOW, THEREFORE, BE IT RESOLVED, by the Legislature of the State of Utah, that all local, state and federal agencies, and any other groups, should cooperate in every way with each other in the study of the most efficient preservation of our water resources.

BE IT FURTHER RESOLVED, that while such studies are being conducted, all local, state and federal agencies, and any other groups concerned, which administer public lands should avoid any drastic adjustments in the grazing use of the land or in vegetation adjustments to the land, in order that any such adjustments will not defeat the purposes of such studies.

**ASSIGNMENTS OF COUNCIL STUDIES**

S. J. R. No. 14.

(Passed March 14, 1963.)

**A Joint Resolution of the Senate and House of Representatives of the State of Utah Making Assignments of Study to the Utah Legislative Council and Requesting a Report to the 36th Legislature.***Be it resolved by the 35th Legislature of the State of Utah:*

WHEREAS, the Utah legislative council is created by law to serve the Legislature of the State of Utah as a continuing research body for the improvement of legislative functions, the examination of existing statutes, to study revenue and expenditures, governmental organization and issues of policy and questions of state-wide importance, and

WHEREAS, the 35th Legislature has been confronted with important legislative problems concerning the welfare of the state of Utah which are in need of study for proper solution.

NOW, THEREFORE, BE IT RESOLVED, that the 35th Legislature of the state of Utah, both houses concurring therein, requests the Utah legislative council to study and prepare as it may determine from the following items a legislative program for the 36th Legislature of the state of Utah as follows:

1. Allocating special funds for general government expenses — To determine a basis for charging special funds for their proper share of general government expenses, including the advisability of consolidating funds for management purposes, and eliminating earmarking of funds.

2. Waiver of governmental immunity — To study the effects upon states, their political subdivisions and municipal corporations of waiver of immunity from suit and consenting to be liable for the torts of its officers, employees and agents as outlined in H. J. R. 21 of the 35th Legislature.

3. School finance formula — To study the public school finance plan in the state, including problems of finance, merit programs, district efforts and state equalization, as outlined in H. C. R. No. 3 of the 35th Legislature.

4. Publication and state reports — A study of departmental and agency reports, magazines and publications to determine a policy of coordination, consolidation and propriety of various state reports and publications, including the question of duplication, multiplicity and cost of publications.

5. Inventory tax exemption — A study of the advisability of an inventory tax exemption on assessed valuation of the various counties, including loss in taxes paid, the impact of tax on other classes of property, possible substitutes for tax loss, benefits accruing from exemption, the equity of an exemption and proper definition of inventories, as defined and described in H. J. R. No. 18 of the 35th Legislature.

6. Uniform commercial code — A continuation of the study by the state bar committee of proposed uniform legislation and its adaption to the Utah situation.

7. Justice of peace system — A follow-up to the study made by the

state bar committee to determine the advisability of reforming the J. P. system.

8. State parks — A study of a finance plan for the development of a state park system for Utah.

9. Legislative examination of state budget and programs — A study of department budgets and programs by the legislative audit committee of the legislative council to implement section 36-4-13, 36-4-14, and 36-4-15, Utah Code Annotated 1953, as amended.

10. Western athletic conference — A study of the desirability and possibility of including the Utah State University and the University of Utah in the same athletic conference and a report to the 36th Legislature.

11. Determining the advisability of a procedures act for the state of Utah.

12. Tax administration in Utah, including tax exempt property.

13. A study of the effects of automation on the growing population.

14. Study of the legal and administrative implementation of recent technical program designed to achieve the elimination of tuberculosis in Utah.

15. Juvenile court — A follow-up to the study by the state bar committee to determine the advisability of reforming Juvenile court system.

16. A study to develop a plan for providing proper facilities for juvenile offenders (H. J. R. No. 3).

17. A study of the problem in Utah of insufficient funds checks (H. J. R. No. 24).

18. A study by the legislative council of the current methods of public care for dependent foster children (H. J. R. No. 26).

19. Legislative council study of the special taxing districts within the state of Utah and their power and policies (H. J. R. No. 27).

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### PROPOSED WILDERNESS SYSTEM

S. C. R. No. 2.

(Passed March 27, 1963.)

**A Concurrent Resolution of the Senate and House of Representatives of the 35th Legislature of the State of Utah, Memorializing Congress to Restrict the Area of the Proposed Wilderness System, and of Other Areas Withdrawn by the Federal Government from State Control and from the Normal Development of Natural Resources by State or Private Agencies.**

*Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:*

WHEREAS, not more than 5% of Utah's land surface area is arable, the remaining 95% comprising mountains and deserts; and

WHEREAS, Utah cannot support its present population, much less support the steadily growing population which is reflected in recent census counts and which the most responsible analysts expect to con-

tinue at the present or even at an accelerating rate, on an agricultural economy, but must develop to the fullest possible extent its natural resources, including mineral and grazing resources, in order to maintain a healthy and growing economy; and

WHEREAS, the State of Utah must develop, husband, conserve and put to the fullest and most efficient use its limited supply of usable water 80% of which falls as snow on the 20% of our land area which lies 7,000 feet and higher above sea level, giving the management of this remote, high-mountain area special importance to this State; and

WHEREAS, almost three-fourths of the land area of the State of Utah is in Federal ownership and management, thus severely limiting revenues available for support of public schools and other operations of State Government; and

WHEREAS, lands in the public domain and in the National Forests do produce at least some revenue to the State and its schools, while lands withdrawn for the purposes of wilderness areas, National Parks and Monuments, Military and Indian Reservations and other similarly restrictive purposes produce no revenue whatever to the State; and

WHEREAS, Utah recognizes the aesthetic and recreational values inherent in its high mountain vastness and its many spectacularly scenic semi-desert and desert areas; and

WHEREAS, most of these areas can best be developed on established principles of multiple use, providing for maximum development of both tangible and intangible resources which they may contain,

NOW, THEREFORE, BE IT RESOLVED by the 35th Legislature of the State of Utah, the Governor concurring therein, that we respectfully urge the Congress of the United States in its consideration of legislation to establish a Wilderness System, to limit the total area to be encompassed in such system to the minimum necessary to achieve the legitimate objectives of the program, and leaving the maximum area open to multiple-use development of both tangible and intangible resources for the support of the basic economy of this and our sister States; and

BE IT FURTHER RESOLVED that we respectfully urge the Congress and the Executive Departments of the Federal Government to give all possible consideration to the principles outlined above in the creation and administration of all National Parks and Monuments, Military Reservations, Indian Reservation and other Federal withdrawals of lands within the respective States which remove such lands from development of whatever resources they may contain by the States and/or by private enterprise; and

BE IT FURTHER RESOLVED that copies of this concurrent resolution be forwarded to the Congress of the United States; to the Executive Departments of the Federal Government; to the members, individually, of the Congressional delegations of Utah and of all the Western, public-lands States; to the Governors of the Western States and to the Legislatures of such Western States as may now be in session; and to the Council of State Governments, as an official expression of the sentiment of the State of Utah on these vital issues.

**COLORADO RIVER STORAGE PROJECT**

S. C. R. No. 3.

(Passed March 16, 1963.)

**A Concurrent Resolution of the Senate and House of Representatives of the Thirty-Fifth Legislature of the State of Utah, With the Governor Concurring Herein, Recommending Construction and Completion of the Participating Projects in Utah as Authorized by the Colorado River Storage Project Act of 1956 and Acts Amendatory and Supplementary Thereto; Further Recommending an Equitable Distribution in Utah of the Waters of the Colorado River; and Proposing a Priority of Use as Between Irrigated and Non-Irrigated Lands for That Water Which is Allocated to Agricultural Uses.**

*Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:*

WHEREAS, the States of the upper division of the Colorado River Basin were apportioned certain waters of the Colorado River by the Colorado River Compact of 1922, and pursuant thereto the Upper Basin states by the Upper Colorado River Basin Compact of 1948 allotted among themselves certain of the water thus apportioned to the upper basin; and

WHEREAS, Utah was thus allotted certain amounts of water from the Colorado River and its tributaries, the development and beneficial use of which will be realized through the participating projects authorized under the Colorado River storage project act of 1956 and act amendatory and supplementary thereto; and

WHEREAS, there is recognized an urgent need for such authorized participating projects in Utah to proceed toward construction and completion at the earliest practicable date, including the creation of a central Utah water conservancy district and the construction of the central Utah project; and

WHEREAS, said water to be developed is the property of the public of the State of Utah, but will be allocated and sold to the users thereof by the Bureau of Reclamation of the United States of America; and

WHEREAS, said water should be distributed equitably to all areas of Utah wherein the water can be applied to beneficial uses with reasonable economic feasibility; and

WHEREAS, certain amounts of said water will be allocated to agricultural uses, and it is recognized that many farms and agricultural operations in Utah have required heavy capital investments for the acquisition and development of land to bring it under irrigation, for the acquisition of machinery and equipment and the construction of buildings and improvements necessary to operate an agricultural program, and for certain water supplies to irrigate the land thus cultivated; but that many of said farms have inadequate water rights and no additional water is now available to supplement such existing rights, and that, therefore, such farms cannot operate economically and profitably unless and until supplementary water is obtained; and

WHEREAS, it seems advisable to allocate agricultural waters developed from the Colorado River and its tributaries first to irrigation of lands already under irrigation to provide a supplementary and ade-

quate supply to protect the capital investment already made, and, second, to irrigation of lands which heretofore have not been irrigated and where comparable capital investments have not yet been made in reliance on irrigation uses;

NOW, THEREFORE, BE IT RESOLVED:

Section 1. That all authorized participating projects in Utah should proceed toward construction and completion at the earliest practicable date, including the formation of a central Utah water conservancy district and the construction of facilities to develop the water contemplated by the central Utah project.

Section 2. That the water developed for use in Utah from the Colorado River and its tributaries, including water developed from the proposed central Utah project and other participating projects, should be distributed equitably to all areas wherein such water can be applied to beneficial uses with reasonable economic feasibility.

Section 3. That, to the extent such waters are allocated to agricultural uses, priority of use should be first to supplement presently inadequate water supplies for land already under irrigation, and, second, to provide water to bring new land under irrigation. Nothing herein is intended to suggest a priority of allocation or use as between agricultural and non-agricultural uses.

BE IT FURTHER RESOLVED that copies of this concurrent resolution be forwarded to Floyd Dominy, Commissioner of Reclamation, Frank Clinton, Regional Director of Bureau of Reclamation, Senator Frank L. Moss; Senator Wallace F. Bennett; Representative Sherman P. Lloyd; and Representative Lawrence Burton.

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### SETTLEMENT CANYON IRRIGATION CONVEYANCE

S. R. No. 1.

(Passed March 6, 1963.)

**A Resolution by the Senate of the Thirty-Fifth Legislature Approving and Consenting to Assignment and Conveyance to Revest Title of Property in Settlement Canyon Irrigation Company as Required Under Section 73-10-4, Utah Code Annotated 1953, as Amended by Chapter 133, Laws of Utah 1953, and Chapter 169, Laws of Utah 1961.**

*Be it resolved by the Senate of the State of Utah:*

WHEREAS, Settlement Canyon Irrigation Company, under the date of April 16, 1948, entered into contract, authorized by law, with the Utah Water and Power Board, for construction of a pipe line and appurtenant facilities for the conservation of water, and

WHEREAS, by the terms of said contract the Settlement Canyon Irrigation Company assigned and transferred certain properties hereinafter described to the Utah Water and Power Board and promised and agreed to construct for and thereafter purchase from the Utah Water and Power Board, the said project and appurtenances and that said contract has now been fully performed by the Settlement Canyon Irrigation Company, and said company has made all payments due under said contract.

NOW, THEREFORE, BE IT RESOLVED that the Utah State Senate, pursuant to the requirements of Section 73-10-4 (11), does approve and

consent to the execution by the Utah Water and Power Board of such deeds, transfers and conveyance as they are requisite and necessary to revest in the Settlement Canyon Irrigation Company the title to the properties hereinafter described.

BE IT FURTHER RESOLVED, that a copy of this resolution be delivered to the Utah Water and Power Board to be attached to said deeds, transfers and conveyances to be executed by the Utah Water and Power Board and delivered to the Settlement Canyon Irrigation Company.

The properties, which are the subject of this resolution and are hereinabove referred to, are particularly described as follows:

All right, title and interest that vested in the State of Utah and Utah Water and Power Board by virtue of that contract with Settlement Canyon Irrigation Company, dated April 16, 1948, and recorded in the office of the County Recorder of Tooele County, State of Utah, in agreements of Book "F" at pages 32-33, and particularly but not by way of limitation, all easements and rights-of-way and all rights of any kind to the concrete pipe line and appurtenant facilities of the Settlement Canyon Irrigation Company in Section 33, T3S, R4W, SLB&M, and in Section 39, T4S, R4W, SLB&M.

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#### SPRING CREEK AND LA VERKIN IRRIGATION CONVEYANCE

S. R. No. 2.

(Passed March 6, 1963.)

**A Resolution by the Senate of the Thirty-Fifth Legislature Approving and Consenting to Assignment and Conveyance to Revest Title of Property and Water Rights in Spring Creek and La Verkin Creek Irrigation Company as Required Under Section 73-10-4, Utah Code Annotated, 1953, as Amended by Chapter 133, Laws of Utah 1953, and Chapter 169, Laws of Utah 1961.**

*Be it resolved by the Senate of the State of Utah:*

WHEREAS, Spring Creek and La Verkin Creek Irrigation Company under the dates of July 21, 1948, and September 27, 1949, entered into contracts, authorized by law, with the Utah Water and Power Board, for the construction of a dam and reservoir and appurtenant works for the conservation of water, and

WHEREAS, by the terms of said contracts the Spring Creek and LaVerkin Creek Irrigation Company assigned and transferred certain properties hereinafter described to the Utah Water and Power Board and promised and agreed to construct for and thereafter purchase from the Utah Water and Power Board, the said project and appurtenances and that said contracts have now been fully performed by the Spring Creek and LaVerkin Creek Irrigation Company, and the said company has made all payments due under said contract.

NOW, THEREFORE, BE IT RESOLVED that the Utah Senate, pursuant to the requirements of Section 73-10-4 (11), does approve and consent to the execution by the Utah Water and Power Board of such deeds, transfers and conveyances, as they are requisite and necessary to revest in Spring Creek and LaVerkin Creek Irrigation Company

the title to the properties and water rights hereinafter described.

BE IT FURTHER RESOLVED, that a copy of this resolution be delivered to the Utah Water and Power Board to be attached to said deeds, transfers and conveyances to be executed by the Utah Water and Power Board and delivered to Spring Creek and LaVerkin Creek Irrigation Company.

The properties and water rights, which are the subject of this resolution and are hereinabove referred to, are particularly described as follows:

All right, title and interest that vested in the State of Utah and the Utah Water and Power Board by virtue of these certain contracts with Spring Creek and LaVerkin Creek Irrigation Company, dated July 21, 1948 and September 27, 1949 and respectively recorded in the office of the County Recorder of Iron County in Agreements and Leases, Book No. 2 at pages 478 and 479 and in Agreements, Book No. 3, at pages 18 and 19, and particularly, but not by way of limitation, all easements and rights-of-way and all rights of any kind to the real property upon which the aforesaid dam and reservoir are constructed in Section 16, T38S, R11W, SLB&M, in Iron County, Utah, and all water rights secured by virtue of Applications Nos. 15508 and 15869 in the office of the Utah State Engineer and an easement to the use of any or all of the facilities in the Spring Creek and LaVerkin Creek Irrigation Company distribution system.

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#### STRAIGHT DITCH AND LAYTON-KAYSVILLE CONVEYANCE

S. R. No. 3.

(Passed March 6, 1963.)

**A Resolution of the Senate of the Thirty-Fifth Legislature Approving and Consenting to Assignment and Conveyance to Revest Title of Property in Straight Ditch Company and Layton-Kaysville Irrigation Ditch Company as Required Under Section 73-10-4, Utah Code Annotated 1953, as Amended by Chapter 133, Laws of Utah 1953, and Chapter 169, Laws of Utah 1961.**

*Be it resolved by the Senate of the State of Utah:*

WHEREAS, Straight Ditch Company and Layton-Kaysville Irrigation Ditch Company under dates of October 25, 1952 and March 18, 1953, entered into contracts, authorized by law, with the Utah Water and Power Board, for the construction of a pipe line and appurtenant structures as a water development project; and

WHEREAS, under the terms of said contract, Straight Ditch Company and Layton-Kaysville Irrigation Ditch Company transferred and conveyed certain properties and easements hereinafter described in the Utah Water and Power Board and promised and agreed to construct for and thereafter purchase from the Utah Water and Power Board the said project and appurtenances and that said contracts have now been fully performed by the said Straight Ditch Company and Layton-Kaysville Ditch Company and said companies have made all payments due under said contract:

NOW, THEREFORE, BE IT RESOLVED, that the Utah State Senate



pursuant to the requirements of Section 73-10-4 (11), does approve and consent to the execution by the Utah Water and Power Board of such deeds, transfers, and conveyances as they are requisite and necessary to revest in Straight Ditch Company and Layton-Kaysville Irrigation Company the title to the properties hereinafter described.

BE IT FURTHER RESOLVED, that two copies of this resolution be delivered to the Utah Water and Power Board to be attached to said deeds, transfers and conveyances to be executed by the Utah Water and Power Board and deliver one copy each to the Straight Ditch Company and Layton-Kaysville Irrigation Ditch Company.

The properties, which are the subject of this resolution are hereinabove referred to as particularly described as follows:

All right, title, and interest that vested in the State of Utah and the Utah Water and Power Board by virtue of those certain contracts with the Straight Ditch Company and Layton-Kaysville Irrigation Ditch Company dated October 25, 1952, and March 18, 1953, and respectively recorded in the office of the County Recorder of Davis County, State of Utah in Book 47 at pages 102-108 and in Books 51 at page 14, and particularly, but not by way of limitation, all easements and rights-of-way and all kinds of any kind to the said pipeline and appurtenant structures and all other rights and interests described in said contracts.

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#### DRY GULCH IRRIGATION CONVEYANCE

S. R. No. 4.

(Passed March 6, 1963.)

**A Resolution by the Senate of the Thirty-Fifth Legislature Approving and Consenting to Assignment and Conveyance to Revest Title of Property and Water Rights in Dry Gulch Irrigation Company as Required Under Section 73-10-4, Utah Code Annotated 1953, as Amended by Chapter 133, Laws of Utah 1953, and Chapter 169, Laws of Utah 1961.**

*Be it resolved by the Senate of the State of Utah:*

WHEREAS, Dry Gulch Irrigation Company, under the dates of April 18, 1951, and September 25, 1952, entered into contracts, as authorized by law, with the Utah Water and Power Board, for the construction of an earth canal and appurtenant structures and for the reinforcing and the raising of an earthen dam on Atwood Lake as a water development project; and

WHEREAS, under the terms of said contract Dry Gulch Irrigation Company assigned and transferred certain properties hereinafter described to the Utah Water and Power Board and promised and agreed to construct for and thereafter purchase from the Utah Water and Power Board the said project and appurtenances and that said contracts have now been fully performed by the said Dry Gulch Irrigation Company and the said company has made all payments due under said contracts;

NOW, THEREFORE, BE IT RESOLVED that the Utah State Senate, pursuant to the requirements of Section 73-10-4 (11), does approve and consent to the execution by the Utah Water and Power Board of

such deeds, transfers and conveyances as they are requisite and necessary to revert in Dry Gulch Irrigation Company the title to the properties and water rights hereinafter described.

BE IT FURTHER RESOLVED that a copy of this resolution be delivered to the Utah Water and Power Board to be attached to said deeds, transfers and conveyances to be executed by the Utah Water and Power Board and delivered to the Dry Gulch Irrigation Company.

The properties and water rights, which are the subject of this resolution and are hereinabove referred to are particularly described as follows:

All right, title and interest that vested in the State of Utah and the Utah Water and Power Board by virtue of those certain contracts with the Dry Gulch Irrigation Company dated April 18, 1951, and the supplemental agreement thereto dated September 25, 1952, and respectively recorded in the office of the County Recorder of Duchesne County, State of Utah, in Miscellaneous Book 13 at pages 543-4-5-6 and in Miscellaneous Book 14 at pages 224-7, and particularly, but not by way of limitation, all easements and rights-of-way and all rights of any kind to diversion dam and the easements and rights-of-way and for the canal as described in said contracts, together with Applications Nos. 9103 and 10705 and all other water rights and interests described in said contracts and in the conveyances of property dated August 27, 1952, recorded in Book of Deeds 26, Pages 59-60; and October 3, 1952, recorded in Book of Deeds, Pages 60-61.

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#### BENSON-BEAR LAKE IRRIGATION CONVEYANCE

S. R. No. 5.

(Passed March 6, 1963.)

**A Resolution by the Senate of the Thirty-Fifth Legislature Approving and Consenting to Assignment and Conveyance to Revest Title of Property and Water Rights in Benson-Bear Lake Irrigation Company as Required Under Section 73-10-4, Utah Code Annotated 1953, as Amended by Chapter 133, Laws of Utah 1953, and Chapter 169, Laws of Utah 1961.**

*Be it resolved by the Senate of the State of Utah:*

WHEREAS, Benson-Bear Lake Irrigation Company, under the dates of March 28, 1949 and October 21, 1955, entered into contracts, authorized by law, with the Utah Water and Power Board, for the construction of a concrete pipeline and appurtenant facilities for the conservation of water, and

WHEREAS, by the terms of said contracts the Benson-Bear Lake Irrigation Company assigned and transferred certain properties hereinafter described to the Utah Water and Power Board and promised and agreed to construct for and thereafter purchase from the Utah Water and Power Board, the said project and appurtenances and that said contracts have now been fully performed by the said Benson-Bear Lake Irrigation Company, and the said company has made all payments due under said contract.

NOW, THEREFORE, BE IT RESOLVED that the Utah State Senate, pursuant to the requirements of Section 73-10-4 (11), does approve and consent to the execution by the Utah Water and Power Board of such deeds, transfers and conveyances, as they are requisite and necessary to revest in the Benson-Bear Lake Irrigation Company the title to the properties and water rights hereinafter described.

BE IT FURTHER RESOLVED, that a copy of this resolution be delivered to the Utah Water and Power Board to be attached to said deeds, transfers and conveyances to be executed by the Utah Water and Power Board and delivered to the Benson-Bear Lake Irrigation Company.

The properties and water rights, which are the subject of this resolution and are hereinabove referred to, are particularly described as follows:

All right, title and interest that vested in the State of Utah and the Utah Water and Power Board by virtue of those certain contracts with the Benson-Bear Lake Irrigation Company, dated March 28, 1949 and October 21, 1955, and respectively recorded in the office of the County Recorder of Cache County, State of Utah, in Book 1 of official records at pages 367-74 and in Miscellaneous Book 18 at page 226, and particularly but not by way of limitation all easements and rights-of-way and all rights of any kind to the concrete pipeline and appurtenant facilities of the Benson-Bear Lake Irrigation Company, located in Sections 3, 4, 9, 10, and 11, of T12N, R1W, SLB&M, in Cache County, Utah, and Right No. 27 as tabulated in the action of Utah Power and Light Company v. Richmond Irrigation Company, et al., Case Number 1772 in the District Court of Cache County, State of Utah.

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### WELLSVILLE IRRIGATION CONVEYANCE

S. R. No. 6.

(Passed March 6, 1963.)

**A Resolution by the Senate of the Thirty-Fifth Legislature Approving and Consenting to Assignment and Conveyance to Revest Title of Property in Wellsville City Irrigation Company as Required Under Section 73-10-4, Utah Code Annotated 1953, as Amended by Chapter 133, Laws of Utah 1953, and Chapter 169, Laws of Utah 1961.**

*Be it resolved by the Senate of the State of Utah:*

WHEREAS, Wellsville City Irrigation Company under dates of June 10, 1949, and January 6, 1950, entered into contract, and agreement to amend contract as authorized by Law with the Utah Water and Power Board, for the construction of a pipeline, canal, and relating appurtenant facilities for the conservation of water; and

WHEREAS, by the terms of said contract the Wellsville City Irrigation Company assigned and transferred certain properties hereinafter described to the Utah Water and Power Board and promised and agreed to construct for and thereafter purchase from the Utah Water and Power Board, the said project and appurtenances and that said contract and amendment to contract have now been fully performed by

the said Wellsville City Irrigation Company, and the said company has made all payments due under said contract.

NOW, THEREFORE, BE IT RESOLVED that the Utah State Senate pursuant to the requirements of Section 73-10-4 (11), does approve and consent to the execution by the Utah Water and Power Board of such deeds, transfers, and conveyances, as they are requisite and necessary to revest in Wellsville City Irrigation Company the title to the properties hereinafter described.

BE IT FURTHER RESOLVED, that a copy of this resolution be delivered to the Utah Water and Power Board to be attached to said deeds, transfers, and conveyances to be executed by the Utah Water and Power Board and delivered to Wellsville City Irrigation Company. The properties, which are the subject of this resolution and are hereinabove referred to, are particularly described as follows: All right, title and interest that vested in the State of Utah and the Utah Water and Power Board by virtue of that certain contract dated June 10, 1949, and agreement to amend contract dated January 6, 1950, and respectively recorded in the office of the County Recorder of Cache County, State of Utah, in Book "18" of Miscellaneous, pages 322-323, and in Book "18" of Miscellaneous, pages 382-383, and particularly, but not by way of limitation, all easements and rights-of-way and all rights of any kind to the pipeline, canal, and relating appurtenant facilities of the Wellsville City Irrigation Company, located in Section 3, TION, R1W, SLB & M, in Cache County, Utah.

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### TRANSPORTATION AND ECONOMIC STUDY

H. J. R. No. 10.

(Passed March 8, 1963.)

**A Joint Resolution of the Senate and the House of Representatives of the Thirty-Fifth Legislature of the State of Utah, Officially Endorsing the Desirability of the Utah Transportation and Economic Study Initiated by the Utah State Association of County Officials and the Utah Municipal League, in Cooperation with the Utah State Department of Highways and the Bureau of Public Roads.**

*Be it resolved by the Legislature of the State of Utah, both Houses concurring therein:*

WHEREAS, it was determined that a statewide comprehensive transportation study was necessary to establish the adequacy of the present State, County and Municipal Highway Systems in the State of Utah; and

WHEREAS, the need exists to determine the amounts of funds required to build roads and streets of proper standards to meet the requirements of the traveling public in Utah; and

WHEREAS, such a study will show the respective responsibilities for Utah highways, the equitable distribution of present funds and result in the development of a master plan for an integrated highway system with priority of programs; and

WHEREAS, the Counties, Towns, and Cities of Utah, and the U.S. Department of Commerce, Bureau of Public Roads and the Utah State

Department of Highways are coordinating and cooperating on a study; and

WHEREAS, the total cost for such needs study is paid by the Bureau of Public Roads, the Utah State Department of Highways, the Cities, Towns and Counties of the State of Utah from existing funds.

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the State of Utah, both Houses concurring therein, endorses the desirability of the Utah Transportation and Economic Study initiated by the Utah State Association of County Officials and the Utah Municipal League without binding this body to accept the results of said study or obligation for funding.

### GOVERNMENTAL IMMUNITY

H. J. R. No. 21.

(Passed March 14, 1963.)

**A Joint Resolution of the 35th Legislature of the State of Utah Making an Assignment to the Utah Legislative Council to Study Waiver of Governmental Immunity from Suit and Consent of the State and its Political Subdivisions to be Liable for the Torts of Their Agents; Providing for a Committee Appointed by the Council and Requesting an Appropriation for the Study.**

*Be it resolved by the Legislature of the State of Utah:*

WHEREAS, the State of Utah, including its political subdivisions, is generally immune from suit having waived its immunity only with respect to specific kinds of actions, and

WHEREAS, governmental immunity from suit may result in hardship to persons who may be injured or whose property may be damaged, and

WHEREAS, it is desirable to investigate and study the experience of other states and of various proposals for a waiver of immunity and permitting consent to liability for torts of agents,

NOW, THEREFORE, BE IT RESOLVED, that the Legislative Council investigate and study the effects upon the state and its political subdivisions of waiver of immunity from suit and consent to be liable for the torts of their officers, employees and agents, together with the most workable statutes and procedures for carrying out such legislation and to make recommendations to the 36th Legislature.

BE IT FURTHER RESOLVED, that the Legislative Council appoint a committee to assist with the study of not to exceed twenty-five members, to include at least two members recommended by the Governor, two members appointed by the President of the Senate, two members appointed by the Speaker of the House, two members of the Utah Municipal League, two members of the County Officers' Association, two members representing the Public School Districts, two members of Special Improvement Districts, two representatives from the Utah State Bar, and the remaining members citizens at large. Not less than one-third of the membership of the committee shall be members of the state legal profession.

BE IT FURTHER RESOLVED, that the Legislative Council shall finance this study, including staff services for research and expenses

of members of the committee and for clerical and office expenses, from appropriations made by the Legislature and from contributions from political subdivisions of state government and other public supported agencies.

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### SAME ATHLETIC CONFERENCE

H. C. R. No. 2.

(Passed March 14, 1963.)

**A Concurrent Resolution of the House of Representatives and Senate of the Thirty-Fifth Legislature of the State of Utah, Declaring the Desire of the Legislature that the University of Utah, and the Utah State University of Agriculture and Applied Science be Members of the Same Athletic Conference.**

*Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:*

WHEREAS, the great state universities of the sovereign state of Utah, the University of Utah and the Utah State University of Agriculture and Applied Science, have been found in friendship and devoted for many years in competitive athletics within the framework of the same athletic conference, and

WHEREAS, there exists among the citizens of the State of Utah a general desire that the two institutions continue to work cooperatively with each other in the area of athletic competition as well as in all phases of educational endeavor, and

WHEREAS, the separation of these institutions contrary to long-established tradition is inconsistent with the spirit of cooperation and friendly rivalry that has long existed between the two institutions and creates a divisive atmosphere, the effect of which reaches considerably beyond intercollegiate athletics, and

WHEREAS, the citizenry of the State of Utah, and particularly the students who are attending both state supported institutions can be better served through a continuation of the long-established policy of mutual participation and cooperation, and

WHEREAS, the Legislature of the State of Utah, as representatives of the citizens of the State, has not only an interest, but, indeed, an obligation in preserving and strengthening the bonds of friendship, mutual understanding and cooperation between the state of Utah's great universities, and

WHEREAS, many Legislators would resort to directive legislation by this legislature, however prudence and friendly understanding dictate that with a thorough study the universities will contribute to the uniting of the people of the state.

NOW, THEREFORE, BE IT RESOLVED: that the Legislature of the State of Utah does hereby declare that it is the desire of the legislature that the great universities of this state, the University of Utah and the Utah State University of Agriculture and Applied Science continue to be bound as one in friendly intercollegiate athletic competition

and the legislature requests that the board of regents and the administration of the University of Utah and the board of trustees and the administration of the Utah State University of Agriculture and Applied Science, promptly undertake whatever action is necessary to achieve this result; and it further requests that the respective boards and administrations make official reports by July 1, 1963, to the Legislative Council of the State of Utah concerning action taken in furtherance of this proposal; and further directs the Legislative Council to report to the 36th Legislature as to the success achieved in uniting the great universities of the State of Utah in their field of athletic competition.

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### FLAMING GORGE DAM AND RESERVOIR

H. C. R. No. 4.

(Passed March 14, 1963.)

**A Resolution of the Senate and the House of Representatives of the Legislature of the State of Utah Memorializing the Congress of the United States to Maintain the Name "Flaming Gorge Dam and Reservoir" for the Dam and Reservoir that now Bears that Name.**

*Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:*

WHEREAS, the dam and reservoir which has been constructed on Green River in northeastern Utah is presently known as the **Flaming Gorge Dam and Reservoir**; and

WHEREAS, the proposal has been made before the Congress of the United States to change the name of this dam and reservoir to "O'Mahoney Lake and Recreation Area";

WHEREAS, in view of the location of this dam and reservoir in relationship to the States of Utah and Wyoming, it would seem desirable to retain its present name;

NOW, THEREFORE, be it resolved by the Legislature of the State of Utah, the Governor concurring therein; that we respectfully urge the Congress of the United States to maintain the presently existing name of the Flaming Gorge Dam and Reservoir as to said dam and reservoir.

BE IT FURTHER RESOLVED, that the Secretary of State of Utah be, and he hereby is, directed to send copies of this resolution to the Senate and the House of Representatives of the United States to the Secretary of the Department of the Interior, and to the Senators and Congressmen representing the State of Utah in Congress.





# L A W S

of the

## STATE OF UTAH, 1963

Passed by

**FIRST SPECIAL SESSION**

of the

**THIRTY-FIFTH LEGISLATURE**

Convened at the Capitol in the City of Salt Lake

May 28, 1963

And Adjourned Sine Die on

May 28, 1963

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Published by Authority

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## AUTHENTICATION

State of Utah }  
Office of Secretary of State } ss.

THIS IS TO CERTIFY that the acts and resolutions published in this volume beginning at Page Six Hundred and Ninety and ending Page Six Hundred and Ninety-Nine, are each full, true and correct copies of the originals, passed at the First Special Session of the Thirty-fifth Legislature of the State of Utah, as they appear of record in the Office of the Secretary of State;

That the First Special Session of the Thirty-fifth Legislature of the State of Utah, was convened at the Capitol in the city of Salt Lake, May 28, 1963, and adjourned sine die on the 28th day of May, 1963.

That all the acts and resolutions passed at said Special Session were officially published on the 28th day of July, 1963.



IN TESTIMONY WHEREOF, I have hereunto set my hand as Secretary of State, and affixed the Great Seal of the State of Utah, at Salt Lake City, this 24th day of June, 1963.

*Lamont F. Zoronto*

Secretary of State

**L A W S**  
of the  
**STATE OF UTAH, 1963**  
Passed at the  
**FIRST SPECIAL SESSION**  
of the Legislature

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**STATE AFFAIRS IN GENERAL**

CHAPTER 1

S. B. No. 1

(Passed May 28, 1963. In effect July 28, 1963.)

**STATE BUILDING BOARD ACT**

**An Act Amending Chapter 10, Title 63, Utah Code Annotated 1953, as Amended; Providing for a Building Program to be Carried Out by the Utah State Building Board, Including Payment of the Costs Thereof; Providing for the Issuance of State Tax Anticipation Notes or Certificates of Payment in Connection with the Temporary Financing of Such Building Program and Appropriating the Proceeds of the Sale Thereof for the Purposes Authorized in This Act; Providing a Fund for the Payment of Interest on and the Redemption of Said Notes or Certificates of Payment; Clarifying the Basis for Application of the Limitation on State Indebtedness Fixed by Section 1 of Article XIV of the Constitution; Exempting Such Notes or Certificates of Payment and the Interest Thereon from Taxation; Providing for Mandamus Action in the Supreme Court Under Certain Circumstances; Making Such Notes or Certificates of Payment Legal Investments for Public, Trust and Other Funds and Security for Faithful Performance on Executions; and Appropriating Monies to Carry Out Said Building Program and to Repay the Loans for Building Construction Projects Authorized by the Thirty-Third and Thirty-Fourth Legislatures.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Sections Enacted.**

Chapter 10, Title 63, Utah Code Annotated 1953, as heretofore amended, is further amended through the addition thereto of sections 63-10-7.1 to 63-10-7.15, which sections shall read as follows:

**63-10-7.1. Building and Expansion Program.**

The following building and expansion program is hereby prescribed to be carried out by the Utah state building board (hereinafter sometimes called "the board"). Said board may construct or otherwise acquire any or all of the buildings and facilities hereinafter set forth and for which monies have been appropriated and may acquire and improve sites

therefore, may furnish and equip such buildings, may provide parking facilities, and may remodel, alter, repair and improve existing buildings and facilities as hereinafter set forth and for which monies have been appropriated. The proposed planning and programing authorizations as set forth are to be construed as estimates only and are subject to such change as the state building board may deem advisable. The building board is directed to prepare, insofar as possible from monies available in the building board planning fund, construction drawings and specifications for those projects requiring same listed herein for which planning is authorized. This act recognizes the provisions of Senate Bill 220, enacted by the Thirty-Fifth Utah Legislature, Regular Session, wherein monies in the "occupation tax reserve fund" are made payable to the state building board "to pay principal loan obligations incurred under chapter 190, Laws of Utah 1961." The building board is hereby authorized to place in the building board planning fund any monies, title to which as of July 1, 1963, is officially under protest before the state tax commission but which otherwise would properly be a part of the "occupation tax reserve fund," such placement to become effective at such time as title to any such monies is settled in the state of Utah, and any such monies are hereby appropriated to the state building board for such purpose.

Institution	1963 Appropriation	Planning Authorization
LOAN REPAYMENT .....	\$ 489,310	
UNIVERSITY OF UTAH:		
Utilities and Campus Development .....	250,000	\$ 787,000
Business Building (2-3) .....	612,000	530,000
Physics Building .....	1,700,000	
Chemistry Building .....	2,384,000	511,000
Pharmacy Building .....	705,000	
Alterations, Repairs & Improvements....	150,000	880,240
Library .....		3,000,000
Biological Science Building .....		2,755,000
Merrill Engineering Building (3) .....		2,173,000
	5,801,000	10,636,240
UTAH STATE UNIVERSITY:		
Library-Class room Building (2) .....	1,195,000	
Utilities .....	450,000	
Hydraulics Laboratory (2) .....	650,000	
Experiment Station .....	300,000	333,000
Land Purchase .....	65,000	65,000
Chemistry Building Remodel .....	125,000	
Television Transmitter .....	130,000	
Auditorium-Fine Arts Center .....		2,800,000
Vet's Science Building Expansion .....		300,000
Science Addition .....		600,000
Alterations, Repairs & Improvements....	70,000	690,000
	2,985,000	4,788,000

## WEBER COLLEGE:

Library-Classroom Building .....	1,500,000	
Fine Arts Center (2) .....	1,000,000	
Campus Development .....	185,000	170,000
Land Purchase .....	65,000	
Science Building .....		2,230,000
Administration-Classroom Building .....		570,000
	<hr/>	<hr/>
	2,750,000	2,970,000

## COLLEGE OF SOUTHERN UTAH:

Physical Education Center .....	990,000	
Land Purchase .....	75,000	
Alterations, Repairs & Improvements....	30,000	24,000
Administration Building Remodel .....		150,000
Fine Arts Center .....		250,000
	<hr/>	<hr/>
	1,095,000	424,000

## SNOW COLLEGE:

Physical Education Facility .....	150,000	150,000
Land Purchase .....	35,000	25,000
Alterations, Repairs & Improvements....	15,000	89,500
Library-Classroom Building .....		250,000
Maintenance and Storage Facility .....		175,000
	<hr/>	<hr/>
	200,000	689,500

## CARBON COLLEGE:

Science Building .....	280,000	
Main Building Remodel .....		290,000
Physical Education Facilities .....		24,000
Music Building Replacement .....		120,000
Campus Development .....		50,000
	<hr/>	<hr/>
	280,000	484,000

## DIXIE COLLEGE:

Library .....	224,540	
Land Purchase .....		16,500
Campus Development .....		35,000
Administration Building .....		122,300
Custodial Building .....		80,500
	<hr/>	<hr/>
	224,540	254,300

## SALT LAKE TRADE

## TECHNICAL INSTITUTE:

Classroom-Administration Building .....	1,400,730	
Automotive Shops .....		378,000
Alterations, Repairs & Improvements....	50,000	
	<hr/>	<hr/>
	1,450,730	378,000

<b>UTAH TRADE TECHNICAL INSTITUTE:</b>		
Purchase of Land and Facilities .....	90,000	160,000
Campus Development .....		30,000
	<hr/>	<hr/>
	90,000	190,000
<b>SCHOOLS FOR THE DEAF AND BLIND :</b>		
Fire Alarm System .....	16,000	
Vocational Building .....	350,000	227,700
Alterations, Repairs & Improvements....	31,588	
Primary Hall Remodeling .....		32,875
Class-Dormitory Building .....		417,000
	<hr/>	<hr/>
	397,588	677,575
<b>STATE TRAINING SCHOOL:</b>		
Kitchen Facilities .....	270,000	
Sewage Treatment Facilities .....	45,000	
Alterations, Repairs & Improvements....	100,000	48,300
Boys & Girls' Cottages.....		250,000
	<hr/>	<hr/>
	415,000	298,300
<b>STATE INDUSTRIAL SCHOOL:</b>		
Girls' Cottages .....	150,000	
Boys' Cottages .....	175,000	
Alterations, Repairs & Improvements....	25,000	
School Addition .....		250,000
Kitchen and Dining Renovation .....		30,000
Gymnasium .....		250,000
	<hr/>	<hr/>
	350,000	555,000
<b>UTAH STATE PRISON:</b>		
Minimum Security Compound .....	375,000	1,125,000
<b>STATE FAIR:</b>		
Alterations, Repairs & Improvements....	25,000	25,000
<b>HISTORICAL SOCIETY:</b>		
Alterations Repairs & Improvements....	8,000	
Archives Building .....		242,000
	<hr/>	<hr/>
	8,000	242,000
<b>DEPARTMENT OF HEALTH:</b>		
Building Remodeling .....	50,000	500,000
<b>CAPITOL BUILDING AND FACILITIES:</b>		
Parking Facilities and Plaza Loan		
Repayment .....	180,000	
Capitol Heating Facilities .....	200,000	
Capitol Remodeling .....	631,000	
Capitol Elevators .....		63,000
Alternate Site of Government .....		50,000
	<hr/>	<hr/>
	1,011,000	113,000
<b>TOTAL</b> .....	<b>\$17,997,168</b>	

**63-10-7.2. Negotiate Loans.**

Whenever the board advises the state board of loan commissioners (hereinafter sometimes referred to as "the commissioners") that any one or more of the building projects authorized by this act is ready to be advertised for bids, and if sufficient appropriated funds are not available to proceed with the letting of the contract for which bids are to be requested, the commissioners shall, subject to the provisions of section 63-10-7.3 of this act, negotiate a loan or loans to the extent authorized herein from fund balances under the control of the state treasurer, the proceeds of which loan or loans are to be used to provide interim financing for state building projects authorized by law and for which monies have been appropriated and shall direct the state treasurer to make available to the state building board the sum or sums of money from time to time required by the building board to pay contractual obligations incurred by the state building board pursuant to loans authorized pursuant to this act. The loan or loans made pursuant to this act shall be limited in the amount hereinafter set forth and for the purposes herein provided for and no interest shall be payable upon any loan or loans made from fund balances under the control of the state treasurer; and provided that nothing herein shall be construed as authorizing or requiring the lending of any fund or funds otherwise limited or restricted in such use by the constitution of the state of Utah.

It is the intent of these provisions to allow authorized projects to be contracted, provided funds, either from loans as authorized in this act or from current revenues, will be sufficient to meet the schedule of payments to the contractor or contractors. It is not required that full contract amounts be available before contracts are let.

**63-10-7.3. State Treasurer to Make Loans — Payment Certification.**

Upon request of the commissioners the state treasurer shall make the aforementioned loan or loans from state funds under his control and by utilizing such funds for such loan or loans in accordance with the following priority;

First, from non-interest bearing demand deposits in banks or other depositories which will not in the opinion of the commissioners after consultation with the state treasurer impair the ability of the state treasurer to redeem outstanding warrants.

Second, by liquidating time deposits in bank or other depositories; said state treasurer to first liquidate such time deposits in accordance with a priority which will result in the liquidation of those time deposits bearing the least rate of interest first, and the greatest rate of interest last, provided, however, that if in the opinion of the commissioners after consultation with the state treasurer funds can be obtained by the commissioners by the issuance of either tax anticipation notes or certificates of payment (said notes or certificates hereinafter being referred to as "certificates of payment") as authorized in this act bearing a rate of interest less than the rate of interest being received by the state on the time deposits referred to, the board of loan commissioners is authorized and directed to, and shall issue certificates of payment as authorized in this act and thus secure funds from private sources with



which to make loans for construction purposes authorized by this act; provided that in any one biennium the combined total amount of all monies borrowed including the principal amount of all loans made by the treasurer, and tax anticipation notes and certificates of payment issued by the board of loan commissioners, shall not exceed the total monies appropriated, designated, or earmarked for state building projects for that biennium and that any loans negotiated or tax anticipation notes or certificates of payment issued pursuant to this section shall be repaid by or before the 31st day of August following the close of the biennium in which the said loans were consummated or certificates or notes issued, from monies so appropriated, designated, or earmarked.

The state board of loan commissioners and state building board shall draw upon funds authorized by law for state building projects to retire certificates of payment issued hereunder or to make repayment to the state treasurer on any loans incurred hereunder.

#### **63-10-7.4. Sales and Use Taxes To Be Used.**

The cost of the improvements described in section 63-10-7.1 shall be paid from the proceeds of the allocation to the board of the additional sales and use taxes imposed from July 1, 1963 to June 30, 1969, pursuant to sections 59-15-4.5 and 59-16-3.5, Utah Code Annotated 1953, as such proceeds are received by the board and from such other sources as the legislature may authorize. However, in order to permit and facilitate the temporary financing of the cost of such improvements, the board may from time to time, in order to pay for all or part of the cost of the improvements described in section 63-10-7.1, including the preparation of plans and specifications and the payment of all fiscal, legal, engineering and other costs and expenses properly incident thereto and to the issuance of the certificates, borrow monies in anticipation of revenues from the imposition of additional sales and use taxes pursuant to the provisions of sections 59-15-4.5 and 59-16-3.5, Utah Code Annotated 1953, and in anticipation of the receipt of any other state revenues not derived from the levy of ad valorem taxes, including, but without limitation, the state's share of the proceeds of the sales and use taxes imposed pursuant to the provisions of chapter 15 and 16 of title 59, Utah Code Annotated 1953, as amended. Such certificates shall be authorized, sold and issued by the state board of loan commissioners (hereinafter sometimes referred to as "the commissioners") pursuant to request contained in a resolution or resolutions to be adopted by the board. The estimated costs appearing in section 63-10-7.1 shall not constitute a limitation on the amount of certificate proceeds which may be expended for any project but certificates issued pursuant hereto shall be limited in the amount prescribed in section 63-10-7.3, and shall not be outstanding in an amount in excess of that permitted by section 1 of article XIV of the constitution. In compliance with the interpretations of said article XIV heretofore made by the supreme court of Utah, the value of the taxable property in the state for purposes of applying the debt limitation contained in section 1 of article XIV aforesaid, shall be considered to be 100% of the reasonable, fair cash value of such taxable property as computed from the last assessment for state purposes completed previous to the issuance of such certificates.

**63-10-7.5. Certificates of Payment — Interest Payments.**

The certificates of payment issued hereunder shall bear such date or dates and shall mature at such time or times as prescribed by the commissioners. Such certificates shall bear interest at a rate or rates not in excess of 4% per annum. There are hereby pledged to the payment of principal of and interest and redemption premiums on such certificates of payment, so much as may be necessary of the allocation to the board of the additional sales and use taxes imposed from July 1, 1963 to June 30, 1969, pursuant to sections 59-15-4.5 and 59-16-3.5, Utah Code Annotated 1953, and other state revenues, including, but without limitation, the state's share of the proceeds of the sales and use taxes imposed pursuant to the provisions of chapters 15 and 16, title 59, Utah Code Annotated 1953, as amended, allocated to the payment thereof. The continued imposition and collection of the sales and use taxes and other revenues pledged in an amount fully sufficient to pay such principal and interest shall be irrevocable and it is hereby expressly recognized and affirmed that the holders of such certificates from time to time shall enjoy a vested contract right in the continued levy, collection and allocation of all such taxes, fees and other sources of revenue and may bring all legal action and do all other things needful to the enforcement of such vested contract right. It is hereby expressly provided that repayment of loans as authorized in section 63-10-7.2 shall be made only from the proceeds of the aforesaid allocation of sales and use taxes and other revenues as are not required for the payment of principal of and interest and redemption premiums of certificates of payment issued by the board of loan commissioners under the provisions of this act.

**63-10-7.6. Certificates — Terms — Redemption.**

The commissioners in providing for the issuance of certificates hereunder shall have full discretion in fixing the terms and details thereof, and may provide for the issuance of said certificates in such form, either coupon or registered, with such conversion privileges and executed in such manner (which may include the use of facsimile signatures) and payable in such medium and at such place or places and subject to such terms of redemption with or without premium, and containing such terms, covenants and provisions as the commissioners may by resolution or resolutions provide.

Any such resolution may provide for the exchange of any such certificates after issuance for certificates of larger or smaller denominations, provided the certificates in changed denominations shall be exchanged for the original certificates in like aggregate principal amounts and in such manner that no overlapping interest is paid and such certificates in changed denominations shall bear interest at the same rate or rates, shall mature on the same date or dates, shall be in the same form except for an appropriate recital as to the exchange, and in all other respects except as to denominations and numbers, be identical with the original certificates surrendered for exchange. Where any exchange is made pursuant to this paragraph, the certificates surrendered by the holders at the time of exchange shall be cancelled, any such exchange shall be made only at the request of the holders of the certificates to

be surrendered, and the commissioners may require all expenses incurred in connection with such exchange, including the authorization and issuance of the new certificates, to be paid by such holders.

**63-10-7.7. Certificates — Negotiable Instruments.**

All certificates issued hereunder except those fully registered, shall be fully negotiable within the meaning and for all the purposes of the negotiable instruments law as said law is now or may hereafter be in effect in the state of Utah.

**63-10-7.8. Payment of Interest and Principal.**

The state auditor shall register all certificates issued hereunder in a book to be kept by him for that purpose. The auditor shall draw a warrant or warrants on the state treasurer for the amount of interest falling due on such certificates on each interest payment date, for the amount of principal falling due thereon on each date on which principal falls due, and for the amount of redemption premiums falling due on such certificates on any interest payment date. Such warrant or warrants shall be drawn at least ten days previous to the date on which any such payments of principal, interest or redemption premiums fall due and such sum as may be necessary is hereby appropriated and set aside from the sales tax revenues and other pledged revenues, if any, deposited with the state treasurer, or in case there be not sufficient money available from such sources, such sum as may be necessary is hereby appropriated and set aside from the general fund of the state or from such other fund as may be provided by law for use from year to year to pay such principal, interest and redemption premiums. The full faith, credit, and resources of the state are hereby pledged to the prompt payment of principal of and interest on all certificates issued hereunder as principal and interest fall due, and whenever necessary to assure such payment, there shall be levied upon all taxable property in the state a tax sufficient for such purpose.

**63-10-7.9. Investment of Funds.**

The commissioners may upon the request of the board issue certificates under this chapter in advance of the time as of which it is anticipated that the proceeds thereof will be needed, and in such event the commissioners are authorized to provide for the investment of such proceeds in obligations of the United States Government or of the state of Utah and to provide for the investment of such proceeds in such obligations from time to time until needed for the purposes for which the certificates were authorized.

**63-10-7.10. Board to Pay Expenses.**

All proceeds of any certificates issued pursuant hereto shall be paid out pursuant to appropriate orders of the board and the board is hereby authorized and directed to pay out of such proceeds any expenses which may be incurred by the commissioners or by the state or its officials in connection with the authorization and issuance of certificates hereunder.

**63-10-7.11. Full Report of Proceedings to Legislature.**

It shall be the duty of the commissioners to make a full report of

their proceedings under the provisions of this act to the legislature during the first week of the next session and biennially thereafter.

**63-10-7.12. Certificates — Tax Exempt.**

The certificates issued under the provisions of this chapter and the interest thereon shall not be taxed for any purposes within this state and the proceeds of the sale thereof shall be covered into the state treasury and the same shall be and hereby are appropriated and shall be used exclusively for the purposes authorized in this chapter. The state treasurer shall pay out said monies so received in the manner required by law, upon the order of the board, subject however, to such approval by the state board of examiners as may be otherwise required by law.

**63-10-7.13. Certificates — Legal Investments.**

All certificates issued pursuant hereto shall be legal investments for all trust funds, including those under the jurisdiction of the state and for the funds of all insurance companies, banks and trust companies, for the state school funds and for all funds under the control of the state treasurer, and may be used as security for the faithful performance on execution of any court or private trust or any other act.

**63-10-7.14. Mandamus Officials to Sign.**

In the event that any official required by the proceedings authorizing certificates hereunder to sign such certificates shall refuse to affix his signature thereto, alleging as the reason therefor the illegality of the certificates to be signed, the board of loan commissioners may bring an original action in the supreme court to mandamus such official to sign the certificates. It is expressly found and determined that the importance of the proposed building program to the state and its inhabitants is such that any such action brought in the supreme court be given precedence over the other matters pending before the court and the court is requested to give such action precedence and to render its decision thereon at the earliest possible time.

**63-10-7.15. Publication of Resolution.**

The commissioners may provide for the publication of any resolution it may adopt for the authorization of certificates of payment hereunder in one issue of a newspaper having general circulation in the state. For a period of thirty days after the date of such publication any person in interest shall have the right to contest the legality of such resolution or any certificates of payment which may be authorized thereby or any of the provisions made for the security and payment of such certificates of payment and after such time no one shall have any cause of action to contest the regularity, formality or legality thereof for any cause whatsoever. Provided that the commissioners, prior to the issuance of certificates of payment hereunder, shall find and certify that all conditions precedent to said issuance, as set forth in section 63-10-7.3 of this act, have been complied with, which finding and certification shall be conclusive; and any certificate of payment issued hereunder shall be incontestable in respect to such finding or certification.

**Section 2. Savings Clause.**

If any one or more sections, clauses, sentences, or parts of this act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of said act, but shall be confined in its operations to the specific provisions so held invalid, and inapplicability or invalidity of any such section, clause, provision or part shall not be taken to affect or prejudice in any way the remaining part or parts of said act; provided, however, that if any such section, clause, provision or part so invalidated, be a part producing revenues essential for the payment of any outstanding certificates issued under the authority of this act, the state must forthwith vouchsafe and provide sufficient revenue to meet the deficit so thus caused.

**Section 3. Appropriation.**

There is hereby appropriated from the revenues earmarked in sections 59-15-4.5 and 59-16-3.5, Utah Code Annotated 1953, the sum of \$17,997,168 or so much thereof as may be necessary to carry out the building and expansion program set forth in section 63-10-7.1 for the 1963-1965 biennium, including the sum of \$489,310 for repayment of loans authorized by the Thirty-Third and Thirty-Fourth Utah Legislatures for building projects.

Approved June 3, 1963.

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**FIRST SPECIAL SESSION**
**CHAPTER 2**

S. B. No. 4

(Passed May 28, 1963. In effect June 3, 1963.)

**APPROPRIATIONS — LEGISLATIVE EXPENSES****An Act Appropriating \$5,000.00 From the General Fund to the Thirty-Fifth Legislature, First Special Session, to Defray Expenses of Both Houses Thereof.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. \$5,000.00 Appropriated.**

There is appropriated to the Thirty-Fifth Legislature of Utah, First Special Session, out of monies not otherwise appropriated, from the general fund, the sum of Five Thousand Dollars (\$5,000) or so much thereof as may be necessary to defray the expenses of the Thirty-Fifth Legislature, First Special Session, and expenses incurred, or to be incurred, during the interim, on behalf of and ordered by the House of Representatives or the Senate of the Thirty-Fifth Legislature.

**Section 2. Effective Until June 30, 1965.**

Any unexpended balance of appropriation made by this act shall not lapse or be closed out until June 30, 1965.

**Section 3. Effective Date.**

This act shall take effect upon approval.

Approved June 3, 1963.

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